

NATURAL GAS SERVICES AGREEMENT

by and among

THE TOWN OF UNION,

as Municipality,

and

DIRECT ENERGY SERVICES, LLC,

as Competitive Supplier

NATURAL GAS SERVICES AGREEMENT

This NATURAL GAS SERVICES AGREEMENT (this “NGSA”) is entered into by and among the Town of Union, an incorporated municipality under the laws of the state of New York, with its principal place of business located 3111 E. Main St., Endicott, in Broome County, New York (“Municipality”), and Direct Energy Services, LLC, a Delaware limited liability company (“Competitive Supplier”). Municipality, and Competitive Supplier may each be referred to individually in this NGSA as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the NYS Public Service Commission (“PSC”) issued an “Order Authorizing Framework for Community Choice Aggregation Opt-out Program” on April 21, 2016, together with other orders issued under Case 14-M-0224 (the “PSC Order(s)”), which authorized municipalities throughout the State of New York to establish community choice aggregation programs (“CCA Programs”);

WHEREAS, the Municipality created its own CCA Program by adopting a Local Law which created the Community Choice Aggregation (Energy) Program (the “Program”) within the Municipality to aggregate consumers to negotiate competitive rates for the supply of natural gas for such consumers;

WHEREAS, Good Energy, L.P. (“CCA Administrator”) has been authorized by the Municipality and the PSC to act as administrator for the Program, pursuant to Local Law and the PSC Approval Letter, to issue a request for proposals (“RFP”) to suppliers to provide energy to Participating Consumers, and to award supply contracts;

WHEREAS, Direct Energy Services, LLC, an entity duly authorized to conduct business in the State of New York as an energy service company (“Competitive Supplier”), desires to provide Natural Gas Supply to Eligible Consumers located within the Municipality, pursuant to the terms and conditions of the Municipality’s Program and this NGSA; and

WHEREAS, the Municipality desires that Competitive Supplier provide Natural Gas Supply as an alternative to Default Service for consumers within the Municipality.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

1.1 Defined Terms. The following terms shall have the meaning hereinafter specified:

“Associated Entities” means any and all of the employees, officers, agents, representatives, and independent contractors and subcontractors of Competitive Supplier or of any of its corporate parents or subsidiaries, which provide goods or services to, or in any way assist, Competitive

Supplier in meeting its obligations under the NGSAs, but specifically excluding the Distribution Utility.

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

“CCA Administrator” has the meaning set forth in the Preamble of this NGSAs.

“CCA Administrator Fee” has the meaning set forth in Article 7.

“CCA Program(s)” has the meaning set forth in the Recitals.

“Change in Law” means any of the following:

- a) if, due to the adoption of an order, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any Governmental Authority with competent jurisdiction, including without limitation any amendment, modification or change in the Distribution Utility’s tariffs, such that: (i) it becomes unlawful for a Party to perform any obligation under this NGSAs, or (ii) any Supplier or municipal aggregator or other similar license, certification or franchise status or requirements are imposed or altered in any material respect;
- b) if, (i) any regulatory agency or court having competent jurisdiction over this NGSAs or the Program requires a change or addition to the terms of this NGSAs or the Program rules or protocols that adversely affects a Party in any material respect, or (ii) any regulatory or court action affects a Party's ability to perform under this NGSAs in any material respect;

- c) if any new or additional charges, fees, and/or obligations, including any pending or proposed costs, that are imposed on the Competitive Supplier in its performance of this NGSA due to (i) a change to any Transporters' Tariff issued on or after the Effective Date, (ii) a change to the Distribution Utility's Tariff issued on or after the Effective Date, or (iii) the imposition of new or additional charges, fees, and/or obligations by any Governmental Authority; or
- d) there are any other changes by any Governmental Authority or Distribution Utility to natural gas customer supply access or municipal aggregation programs in a manner which directly increases or decreases the cost of performance by the Competitive Supplier under this NGSA.

"Commercially Reasonable" means any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known, or that, in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations, as defined in the Uniform Business Practices (accessible at: <https://dps.ny.gov/uniform-business-practices>) or, without limitation, in additional applicable law and regulations.

"Competitive Supplier" has the meaning set forth in the Preamble of this NGSA.

"Default Service" means natural gas supply service provided by the Distribution Utility to customers who are not currently receiving Service from Competitive Supplier or another energy services company authorized to conduct business in the State of New York. Residential and Small Non-Residential consumers within the Municipality that receive Default Service, and have not opted out, will be enrolled in the Program as of the Effective Date.

"Distribution Utility" means the owner or controller of the means of distribution of the natural gas that is regulated by the PSC in the Municipality.

"Electronic Data Interchange" or "EDI" means the exchange of business data in a standardized format between business computer systems.

"Effective Date" means the day immediately following final day of the initial Rescission Period.

"Eligible Consumers" means Residential and Small Non-Residential Natural Gas Customers (together defined as "mass market" by the PSC) of natural gas who receive Default Service from the Distribution Utility as of the Effective Date, or "New Consumers" that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. 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 Municipality, as such boundaries exist on the Effective Date of this NGSA.

“FERC” means the Federal Energy Regulatory Commission, that has jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates.

“Force Majeure” means a material, unavoidable occurrence beyond a Party’s control, and does not include inability to pay, an increase or decrease in Taxes or the cost of natural gas, the economic hardships of a Party, or the full or partial closure of a Party’s facilities, unless such closure itself is due to Force Majeure.

“General Communications” has the meaning set forth in Section 5.7.

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

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

“Information Period” has the meaning set forth in Section 3.1.

“Local Law” means Local Law #4 of the Year 2017 adopted by the town board of the Municipality on June 21, 2017, and made effective as of July 13, 2017, entitled the “Community Choice Aggregation (Energy) Program.”

“Municipality” has the meaning set forth in the Preamble of this NGSA.

“Natural Gas Supply” means the provision of natural gas by Competitive Supplier.

“New Consumers” means residential and small consumers of natural gas that become Eligible Consumers after the Effective Date, including those that opt in or move into Municipality and those who complete or terminate other third-party supply contracts and have returned to Default Service, provided these consumers have not previously opted out of the Program.

“New Taxes” means any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Natural Gas Supply, or any Governmental Rule enacted and effective on or after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.

“NGSA” has the meaning set forth in the Preamble.

“Normal Business Hours” has the meaning set forth in Section 5.2.

“Opt-Out Period” has the meaning set forth in Section 3.1.

“Participating Consumers” means Eligible Consumers enrolled in the Program, either because they are consumers who receive Default Service from the Distribution Utility as of the

Effective Date and have not opted out, or have been served by the Program and have not opted out, or are New Consumers.

“Parties” has the meaning set forth in the Preamble of this NGSA.

“Point of Sale” means Distribution Utility’s city gate(s) or any interface with the Distribution Utility for delivery to Participating Consumers by the Distribution Utility.

“Program” has the meaning set forth in the Recitals of this NGSA.

“PSC” means the New York State Public Service Commission or its successor.

“PSC Approval Letter” means that certain letter dated September 15, 2020, filed under Case 14-M-0224 authorizing Municipality to administer the Program using a CCA Administrator.

“PSC Order(s)” has the meaning set forth in the Recitals of this NGSA.

“Rescission Period” means the three (3) day period immediately following the expiration of the Opt-Out Period during which time an Eligible Consumer may terminate or rescind such Eligible Consumer’s decision to participate in the Program.

“Residential Customer” has the meaning set forth in the Uniform Business Practices.

“RFP” has the meaning set forth in the Recitals of this NGSA.

“Service Commencement Date” means the date of the Participating Consumers’ first meter read after the Effective Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.

“Service Contacts” has the meaning set forth in Section 5.4.

“Small Non-Residential Natural Gas Customer” means a non-residential natural gas customer who, on an annual basis, does not use more than 750 dekatherms, or its equivalent, when usage is aggregated across all accounts as defined in Section 1 of the Uniform Business Practices.

“Taxes” means all applicable federal, state, and local taxes, including any associated penalties and interest and any new taxes imposed in the future during the Term.

“Term” has the meaning set forth in Section 4.1.

“Therm” means the equivalent of one hundred (100) cubic feet.

“Transporters” means the pipeline or pipelines necessary to effectuate the delivery of Natural Gas Supply to the Distribution Utility.

“Uniform Business Practices” means those regulations governing the business practices of utilities and energy services companies with regards to natural gas service, billing, marketing, data, and customer rights, issued by the PSC in Case 98-M-1343.

ARTICLE 2 RIGHTS GRANTED

2.1 General Description and Limitations. Competitive Supplier is hereby granted the exclusive right to be the default provider of Natural Gas Supply to Participating Consumers pursuant to the terms of this NGSA. In accordance with Article 3 below, all Eligible Consumers will be automatically enrolled in the Program unless they choose to opt-out or have previously opted out of the Program. In the event the geographic boundaries of the Municipality change during the Term, Municipality agrees to provide written notice to Competitive Supplier of the altered boundaries. Upon receipt of Municipality's written notice, Competitive Supplier will continue to provide Natural Gas Supply to the Participating Consumers located within the boundaries as existed on the Effective Date of this NGSA, and agrees to evaluate whether the additional Eligible Consumers resulting from the Municipality's altered boundaries may be added based on then current market conditions. If the Competitive Supplier determines it is feasible, then Competitive Supplier will be obligated to provide notification to the Eligible Consumers and enroll for Natural Gas Supply if they do not elect to opt-out. As between the Parties, Competitive Supplier has the sole obligation of making appropriate arrangements with the Distribution Utility, and any other arrangements that may be necessary so that Participating Consumers receive the natural gas supplies to be delivered pursuant to this NGSA. The Municipality will specifically authorize the Distribution Utility to provide, and Competitive Supplier will have the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably available from the Distribution Utility. The fees charged by the Distribution Utility for the provision of this data will be paid for by Competitive Supplier and not passed onto Participating Consumers. Competitive Supplier will request consumption data for individual Participating Consumers from the Distribution Utility via EDI. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, the CCA Administrator, on behalf of the Municipality, agrees to use Commercially Reasonable efforts to assist Competitive Supplier in obtaining such information for Participating Consumers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Eligible Consumers and/or the PSC, where necessary as a prerequisite to the provision of such information. Competitive Supplier will not be responsible for any errors that Competitive Supplier or any of its Associated Entities makes in the provision of Natural Gas Supply to the extent that such errors are caused by errors or omissions in the information provided to it by the Distribution Utility. Competitive Supplier also will not be liable to Participating Consumers if there is a delayed or unsuccessful enrollment of a Participating Consumer, or de-enrollment, that is a result of a Municipality, CCA Administrator, or Utility's negligent act, omission, delay, or breach of this NGSA.

2.2 Ownership And Use of Eligible Consumer Data.

2.2.1 Competitive Supplier acknowledges that (i) Competitive Supplier does not hold any permanent right, title or interest in Eligible Consumer data, and (ii) such data is to be obtained, retained and used by Competitive Supplier and its Associated Entities solely to provide Natural Gas Supply to Participating Consumers and to render other services expressly required or permitted under this NGSA. Any other use of Eligible Consumer data is prohibited without the prior written consent of the Municipality.

2.2.2 Notwithstanding Section 2.2.1, Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of Natural Gas Supply or other performance pursuant to this NGSA, provided that Competitive Supplier will take reasonable measures to secure the confidential nature of such data and the restrictions set forth in this NGSA.

ARTICLE 3

NOTIFICATION OF OPT-OUT RIGHTS; ENROLLMENT PROCEDURES

3.1 Notification To Eligible Consumers of Opt-Out Rights. In accordance with Local Law and the PSC Orders, CCA Administrator will provide educational information concerning the Program to Eligible Consumers for a period of no less than two (2) months prior to the Effective Date (the "Information Period"). Following the Information Period, Competitive Supplier will provide written notice on Municipality's letterhead (the "Opt-Out Notice") to Eligible Consumers (i) of the date on which such Eligible Consumer will be automatically enrolled in the Program, and (ii) that Competitive Supplier will be providing Natural Gas Supply to such Eligible Consumer as of the same date, unless such Eligible Consumer opts-out during the thirty (30) day period following the delivery of the Opt-Out Notice (the "Opt-Out Period"). The Opt-Out Notice will be mailed to each Eligible Consumer prior to the date of automatic enrollment and will: (a) prominently state all charges to be assessed by Competitive Supplier; (b) at a minimum, provide a summary of the prices and terms included in Exhibit A; (c) state how such Eligible Consumer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; (d) contain a postage pre-paid business reply mail insert, (e) state how Eligible Customers may rescind their enrollment in the Program during the Rescission Period, and (f) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default Service or choose a new competitive supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Municipality. The parties may take commercially reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the program, consistent with any governmental rules.

3.2 Enrollment. Subject to Section 3.1, Eligible Consumers who elect not to opt-out of the Program will be automatically enrolled in the Program and become Participating Consumers as of the Effective Date. Following the Effective Date, Competitive Supplier will provide any New Consumers with an Opt-Out Notice within a reasonable amount of time after the Distribution Utility notifies Competitive Supplier of the existence of such New Consumer. New Consumers who elect not to opt-out of the Program will be automatically enrolled in the Program and become Participating Consumers on the date set forth in such New Consumer's Opt-Out Notice. Competitive Supplier must enroll all Eligible Consumers in accordance with applicable PSC and Distribution Utility rules.

3.3 Coordination with Distribution Utility. The Municipality will direct the Distribution Utility to provide to Competitive Supplier a list of (i) Participating Consumers as of the Effective Date, and (ii) New Consumers periodically following the Effective Date, as well as such Participating Consumers' and New Consumers' service and billing addresses, and any other information necessary for Competitive Supplier to begin providing Natural Gas Supply (a) to such Participating Consumers as of the Service Commencement Date, and (b) to such New Consumers following the applicable Opt-Out Period for such New Consumer.

3.4 Re-Enrollment after Opt-Out. At any time during the Term, Eligible Consumers who have previously opted out of the Program may request that they be enrolled in the Program. Competitive Supplier will provide Natural Gas Supply to such Eligible Consumers at the price as set forth in Exhibit A.

3.5 Consumers Served by Third-Parties. Consumers being served under other competitive natural gas supply programs offered by third-parties will not be automatically enrolled as Participating Consumers when such third-party programs terminate. Competitive Supplier agrees that consumers under such third-party competitive supply programs may affirmatively opt-in at any time and receive Natural Gas Supply, thereby becoming Participating Consumers. New Consumers who opt-in as provided in this Section 3.5 will be enrolled in the Program in accordance with Local Law and the PSC Orders at the rates reflected in Exhibit A that refer specifically to New Consumers.

3.6 Termination Fees. There will be no termination fees for any Participating Consumers to disenroll from the Program.

ARTICLE 4 TERM AND TERMINATION

4.1 Term. This NGSA will commence on the Effective Date, provided that the Competitive Supplier's obligation to provide Natural Gas Supply will not commence until the Service Commencement Date and will continue for a period of twenty-four (24) months (the "Term"), unless the Term is extended or terminated earlier in accordance with the terms of this Section 4.1. The Term may be extended at any time by the mutual written agreement of the Parties, and Exhibit A will be updated as necessary to reflect any new pricing terms mutually agreed upon by the Parties. To avoid doubt, Competitive Supplier's obligation to begin providing Natural Gas Supply will not commence until: (i) the Municipality has fulfilled its community outreach obligations in accordance with Section 6.2, and (ii) the Distribution Utility has provided Competitive Supplier with the information necessary for Competitive Supplier to begin providing Natural Gas Supply to Participating Consumers. Upon written notice to Municipality, Competitive Supplier may modify the term of this NGSA if the Service Commencement Date for Participating Customers is delayed more than thirty (30) days for any reason other than a delay caused by Competitive Supplier.

4.2 Termination. This NGSA may be terminated at any time during the Term upon written notice to the other Parties:

4.2.1 by the Municipality or Competitive Supplier, if any other Party fails to remedy or cure any breach of any material provision or condition of this NGSA (including, with respect to Competitive Supplier, Section 2.2.2 and Article 9), but excluding the failure to provide or arrange for Natural Gas Supply, which is addressed in Section 4.2.6), within sixty (60) days following written notice to do so by the non-breaching Party;

4.2.2 by the Municipality or Competitive Supplier, if any material provision or condition of this NGSA be finally adjudged invalid by any court of competent jurisdiction, or if

the PSC exercises any lawful jurisdiction so as to invalidate or disapprove this NGSA in whole or in material part;

4.2.3 by the Municipality or Competitive Supplier if a Change in Law prevents Competitive Supplier from performing its obligations under this NGSA;

4.2.4 by the Municipality if a court, the PSC, or other Governmental Authority adjudicates contrary to Article 6;

4.2.5 by the Municipality or Competitive Supplier if: (i) an order is entered against any other Party approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) if any Party files a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of such Party property;

4.2.6 by the Municipality without a cure period if Competitive Supplier fails to provide or arrange for Natural Gas Supply to Participating Consumers in accordance with the terms of this NGSA, provided, however, that no such termination right shall exist if Competitive Supplier's failure to provide or arrange for Natural Gas Supply to Participating Consumers occurs as a result of or due to: (i) a failure or default by Municipality, or (ii) actions or inactions by any Governmental Authority or the Distribution Utility;

4.2.7 by any Party in accordance with Section 18.6; or

4.2.8 by the Municipality or Competitive Supplier pursuant to Section 17.1.

4.2.9 Competitive Supplier may immediately terminate this Agreement upon written notice, if the Service Commencement Date for all Participating Customers is delayed more than thirty (30) days for any reason other than a delay caused by Competitive Supplier.

4.3 Obligations Upon Termination. Following termination of this NGSA, (i) the Parties will each discharge by performance all obligations due to any other Party that arose up to the date of termination of the NGSA, (ii) Competitive Supplier will continue to have the right to collect all monies due for services rendered to that date, (iii) Competitive Supplier will have all Participating Consumers switched back to Default Service by submitting all consumer drops via EDI to the Distribution Utility in a form acceptable to the Distribution Utility, and (iv) upon completion of reverting all Participating Consumers to Default Service, Competitive Supplier will delete all Participating Consumer information it obtained to perform under this Agreement and will not retain any copies of such information except as related to bills issued, paid, or unpaid. This Section shall not be interpreted to require the Competitive Supplier to take any action regarding the Participating Consumer Information that is contrary to the data security obligations imposed on it by law or regulation, or as required by any EDI or data security agreement between the Competitive Supplier and the Distribution Utility.

ARTICLE 5 CONTINUING COVENANTS

5.1 Standards of Management and Operations. Competitive Supplier must (i) exercise reasonable care to assure that its facilities are prudently and efficiently managed; (ii) ensure that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; (iii) deliver or arrange to deliver an uninterrupted amount of Natural Gas Supply as required under this NGSA; and (iv) comply with all relevant industry standards and practices for the supply of natural gas to Participating Consumers.

5.2 Customer Service Access. Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Participating Consumers. Such services must be reasonably accessible to all Participating Consumers and be available via a toll-free telephone number from 9:00 A.M. - 5:00 P.M. Eastern Time, Monday through Friday ("Normal Business Hours"), to allow Participating Consumers to resolve concerns, ask questions and transact business with respect to the Natural Gas Supply received from Competitive Supplier. Competitive Supplier will serve as a communications liaison among Competitive Supplier, Municipality, and the Distribution Utility with respect to customer service-related issues.

5.3 Municipality Website. Municipality will post Program-related information on the Municipality's website or a related Program website that will be available to Participating Consumers in compliance with all PSC Orders related to the Program. Competitive Supplier is not responsible for municipality website content or any customer complaints related to the website.

5.4 Responding to Requests for Information. To the extent authorized by the Participating Consumer(s) (if required by applicable law), Competitive Supplier will respond reasonably promptly during Normal Business Hours, and without charge, to reasonable requests of the Municipality for information or explanation regarding the matters covered by this NGSA. Competitive Supplier will designate a service representative or representatives (the "Service Contacts") who will be available for these purposes and will identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Section 5.4, the Service Contacts may call upon other employees or agents of Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Section 5.4 will be interpreted as limiting the obligation of Competitive Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of PSC regarding customer service.

5.5 Arranging for Natural Gas Supply. Competitive Supplier will participate in or make appropriate arrangements with any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of Natural Gas Supply to the Distribution Utility for delivery to Participating Consumers, and Competitive Supplier must exercise Commercially Reasonable efforts to cooperate with any other entity to ensure a source of back-up natural gas is available in the event that Competitive Supplier is unable to deliver Natural Gas Supply in accordance with this NGSA. Competitive Supplier will not be responsible to the Municipality, any third party or any Participating Consumers in the event that, through no fault of Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers.

5.6 Non-Discriminatory Provision of Service. Competitive Supplier will provide Natural Gas Supply to all Participating Consumers on a non-discriminatory basis at the prices in Exhibit A or as amended if applicable; however, those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential and small non-residential) or by such other categories as appear in Exhibit A. To the extent prohibited by applicable law, Competitive Supplier may not deny service to an Eligible Consumer or Participating Consumer for failure to pay the bills of any other natural gas company or of any other aggregator, marketer or broker of natural gas, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills issued by Competitive Supplier, subject to any Governmental Rules. Provision of Natural Gas Supply will be subject to Competitive Supplier's standard credit policy as described in Exhibit A.

5.7 Approval Of General Communications. Competitive Supplier will cooperate with the Municipality in the drafting and sending of messages and information to Eligible Consumers or Participating Consumers concerning the Program or any matter arising under or related to this NGSAs. Whether directly or through its Associated Entities, and prior to sending any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Eligible Consumers or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), Competitive Supplier must provide a copy of such General Communications to the Municipality and to its CCA Administrator for their review and approval. The Municipality or its CCA Administrator have the right to disapprove such General Communications and suggest revisions if they find the General Communication to be inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead Eligible Consumers or Participating Consumers; provided that: (i) that the General Communications will be deemed approved if the Municipality or CCA Administrator fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval will be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; or (b) in the nature of routine monthly or periodic bills or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) above will require approval. If the Municipality objects to any General Communications on the grounds it is inconsistent with the purposes and goals of the Municipality, Competitive Supplier, after consultation as provided in this Section 5.7, may nevertheless elect to send such General Communications provided that it: (i) clearly indicates on such communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Consumers with opportunity to elect not to receive such General Communications. The Municipality and its CCA Administrator's right to reject General Communications shall not apply to any communications related to Competitive Supplier's enforcement rights under the NGSAs or agreements with Participating Consumers, including but not limited to, any notice of Force Majeure or Change In Law.

5.8 Participating Consumer Lists. To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), and upon request of the Municipality or of CCA Administrator, Competitive Supplier must provide aggregate consumption information as the Municipality or CCA Administrator may request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide Participating Consumer lists in an electronic format mutually agreed upon by the Parties.

5.9 Compliance With Laws. The Parties must promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this NGSA.

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

ARTICLE 6 ROLE OF THE MUNICIPALITY

6.1 Role of Municipality. Under this NGSA, the Municipality will not actually receive, take title to, or be liable for the supply or delivery of Natural Gas Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under the PSC Orders and Local Law. It is the sole obligation of Competitive Supplier to arrange for the delivery of Natural Gas Supply to Participating Consumers. The Parties agree that, with regards to natural gas, Municipality is not a "public utility company" or providing any "public utility service" within the meaning of General Municipal Law § 360 and Article 4 of Public Service Law as a result of this NGSA. Should any Governmental Authority adjudicate to the contrary, the provisions of Section 4.2.4 shall apply. However, the Municipality may be considered to be operating a municipal load aggregation plan pursuant to the PSC Orders and Local Law. Competitive Supplier hereby agrees that it will take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Consumer due to any act or failure to act on the part of Competitive Supplier or its Associated Entities relating to the delivery of Natural Gas Supply. Pursuant to Article 14 of this NGSA, Municipality is not responsible for any claims from Participating Consumers related to any interruptions of service or delivery of Natural Gas Supply under this NGSA, including pipeline interruptions, physical commodity supply, or any service not specifically required to be performed or provided by Municipality.

6.2 Community Outreach. For a period of no less than two (2) months prior to the Effective Date, Municipality will work with CCA Administrator to conduct outreach to educate the residents living in the Municipality about the Program. Municipality will report on its efforts to inform Eligible Consumers of the Program to Competitive Supplier upon request. Municipality will retain final control of all communications related to the Program.

6.3 Relationship with CCA Administrator. The Municipality has authorized the CCA Administrator to act on its behalf in connection with the implementation and operation of the Program. Competitive Supplier will be entitled to rely upon any information or direction provided to Competitive Supplier by the CCA Administrator in connection with this NGSA as if such information or direction was provided by the Municipality. Following the execution hereof, the

Municipality will cause the CCA Administrator to perform all necessary steps to secure the information necessary to fulfill the customer notification requirements of the Program and otherwise cause CCA Administrator to assist the Municipality with its obligations under this NGSA.

ARTICLE 7 CCA ADMINISTRATOR FEE

7.1 CCA Administrator Fee. Competitive Supplier agrees to pay CCA Administrator an amount equal to \$0.0055 for each Therm delivered, invoiced, and paid for by Participating Consumers (the "CCA Administrator Fee"). Competitive Supplier must pay the CCA Administrator Fee to CCA Administrator by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Consumer during the calendar month two (2) months prior, provided that Competitive Supplier has received payment with respect to the natural gas used by the Participating Consumers. If Competitive Supplier has paid a prior CCA Administrator Fee that contained an error, Competitive Supplier may offset or adjust future CCA Administrator Fee payments due under this NGSA to account for such error, provided that Competitive Supplier provides an explanation of the error and adjustments made in sufficient detail to CCA Administrator.

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 Schedule Of Prices and Terms. Competitive Supplier agrees to provide Natural Gas Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A. If the Service Commencement Date for Participating Customers is delayed more than thirty (30) days for any reason other than a delay caused by Competitive Supplier, then Competitive Supplier may terminate the Agreement pursuant to the relevant subsection of 4.2, or alternatively change the prices or the term in order to be made whole.

8.2 Obligation To Serve. As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply as may be necessary to provide Natural Gas Supply for all Participating Consumers. Except as explicitly limited by the terms included in Exhibit A, Competitive Supplier is obligated to accept all Participating Consumers, regardless of their location or energy needs, provided such Participating Consumers are eligible under the applicable regulations and tariffs of the Distribution Utility.

8.3 Metering. The Distribution Utility will be responsible for any metering which may be required to bill Participating Consumers in accordance with the Distribution Utility's terms and conditions for competitive suppliers.

8.4 Terms And Conditions Pertaining to Individual Account Service.

8.4.1 Title. Title to Natural Gas Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. In accordance with the Distribution Utility's terms and conditions for competitive suppliers, Competitive Supplier will be responsible for any and all losses incurred on the local distribution systems, as determined by the Distribution Utility.

8.4.2 Billing and Payment. Unless otherwise specified in Exhibit A to this NGSA, all billing under this NGSA will be based on the meter readings of each Participating Consumer's meter(s) performed by the Distribution Utility. Competitive Supplier will cause the Distribution Utility to prepare and mail bills to Participating Consumers monthly. Competitive Supplier will adopt the billing and payment terms offered by the Distribution Utility to its consumers on Default Service. If actual meter date is unavailable, Competitive Supplier may cause the Distribution Utility to bill based on its good faith estimates of usage. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

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

8.4.4 Taxes. All Taxes imposed with respect to the sale or consumption of Natural Gas Supply required to be collected by Competitive Supplier will be included on the Participating Consumer's bill and will be remitted to the appropriate taxing authority by Competitive Supplier. Participating Consumers will be responsible for all Taxes that are customarily imposed upon a purchaser of natural gas. Participating Consumers will be responsible for identifying and requesting any exemption from the collection of any Tax by providing appropriate documentation to Competitive Supplier. To avoid doubt, Competitive Supplier will be responsible for all Taxes imposed upon it as a supplier of natural gas, including Taxes on Competitive Supplier's income, but excluding any gross receipts Tax.

ARTICLE 9 CONDITIONS PRECEDENT

9.1 Conditions Precedent. The Municipality's obligations under this NGSA are conditioned upon Competitive Supplier fulfilling the following requirements prior to the Service Commencement Date:

9.1.1 maintaining authorization from the PSC;

9.1.2 executing any appropriate applications and agreements required in connection with this NGSA;

9.1.3 obtaining or maintaining authorization from the FERC to sell natural gas at market-based rates;

9.1.4 completing EDI testing with the Distribution Utility;

9.1.5 providing all documentation required by the Distribution Utility; and

9.2 Termination for Failure to Satisfy Conditions Precedent. If Competitive Supplier has not fulfilled all the conditions precedent set forth in Section 9.1 by the Service Commencement Date, then Municipality may terminate this NGSA without any liability from Municipality to Competitive Supplier.

ARTICLE 10
SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS

10.1 Uniform Business Practices Compliance. Competitive Supplier agrees that it, and its Associated Entities that are directly or indirectly involved in providing Natural Gas Supply or meeting Competitive Supplier's obligations under the NGSA, will comply with the provisions of the Uniform Business Practices as applicable to energy services companies, including, without limitation, all necessary disclosures with respect to variable pricing. In addition, Competitive Supplier and its Associated Entities agree to comply with any code of conduct or policies the PSC may adopt in accordance with the PSC Orders and to all related Orders of Case 14-M-0564 and 14-M-0224 to which the Municipality and its CCA Administrator is required to adhere.

10.2 Description Of Supplier's Procedures and Services. On or before the Effective Date, Competitive Supplier agrees to provide Municipality and its CCA Administrator with copies of its billing and termination procedures, customer services, confidentiality and related practices, and procedures for approval by the Municipality (which approval will not be unreasonably withheld). If permitted by a Participating Consumer or to the extent required by Governmental Rules, Competitive Supplier agrees to provide notice to the Municipality of any consumer complaints received from a Participating Consumer, and the Municipality will have the right, but not the obligation, to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The failure of Competitive Supplier's procedures and practices to comply with Governmental Rules will be deemed grounds for termination of this NGSA, at the discretion of the Municipality, after providing written notice of such failure to Competitive Supplier, and allowing Competitive Supplier sixty (60) days to cure such failure.

ARTICLE 11
[RESERVED]

ARTICLE 12
NATURAL GAS SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 Natural Gas Supply Information.

12.1.1 Quarterly Report of Sales. Competitive Supplier agrees to provide the Municipality or its CCA Administrator with a quarterly report of sales, which will contain: (i) the actual aggregate Therm sales for each meter read during such quarter and (ii) the number of Participating Consumer accounts active in each meter read during such quarter. The quarterly report will be due to the Municipality or its agent within sixty (60) days following the close of each quarter (March 31, June 30, September 30, and December 31). The aggregate Therm sales and number of Participating Consumer accounts will be listed in the report both by rate code and

rate name as shown on Exhibit B attached hereto. Quarterly reports will be provided in electronic format.

12.1.2 Consumer-Related Data. On or after the Service Commencement Date, in accordance with applicable law, Competitive Supplier will maintain consumer-related data in electronic form; including utility account number, billing name, billing address, service address, and historical usage data. A violation of this Section 12.1.2 will be grounds for termination under Section 4.2.1, unless such violation is due to a system or reasonable administrative error and Competitive Supplier demonstrates to the Municipality's reasonable satisfaction that such system or administrative error exists and Competitive Supplier takes good faith actions to resolve such issue.

12.1.3 Standard of Care. Competitive Supplier and its Associated Entities agree to use all Commercially Reasonable efforts in preparing and providing any information or data required under this NGSA. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it agrees to provide corrections to such information or data to the Municipality or its agent within a Commercially Reasonable time.

12.2 Books And Records. Competitive Supplier agrees to keep its books and records in accordance with any applicable regulations or guidelines of the PSC, FERC, and any other Governmental Authority. The Municipality will have electronic access to any reports mandated by the United States Securities and Exchange Commission, which are available on the "EDGAR" system.

12.3 Copies of Regulatory Reports and Filings. Upon reasonable request, Competitive Supplier will provide to the Municipality a copy of each public periodic or incident-related report or record relating to this NGSA that it files with any Governmental Authority related to rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements; unless Competitive Supplier is required by Governmental Rules to keep such reports confidential. Competitive Supplier may be reimbursed its reasonable costs of providing such copies, if only available in hard copy.

ARTICLE 13 RESOLUTION OF DISPUTES

13.1 Dispute Resolution. The Parties agree to act in good faith to resolve any dispute(s) that may arise regarding this NGSA on an informal basis. Any dispute under this NGSA will be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations will be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations within such fourteen (14) day period, the Parties may seek judicial enforcement subject to the provisions of this NGSA. 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 NGSA.

ARTICLE 14 INDEMNIFICATION

14.1 Indemnification by Competitive Supplier. In addition to any other remedies available to the Municipality at law or equity, Competitive Supplier agrees to indemnify, defend and hold harmless Municipality and its respective officials, officers, employees, agents, representatives and independent contractors (collectively, the “Indemnified Parties”) from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys’ fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the Indemnified Parties to the extent arising directly from or in connection with any material breach by Competitive Supplier, and/or its Associated Entities that are directly or indirectly involved in providing Natural Gas Supply or meeting Competitive Supplier’s obligations under the NGSA, of its material obligations, covenants, representations, or warranties contained in this NGSA and not resulting from the actions (or omissions where there is a duty to act) of the Distribution Utility, Municipality, CCA Administrator or any Governmental Authority.

14.2 Notice Of Indemnification Claims. If an Indemnified Party seeks indemnification pursuant to this Article 14, it must promptly notify Competitive Supplier of the existence of a claim or potential claim as soon as practicable after learning of such claim or potential claim, describing with reasonable particularity the circumstances giving rise to such claim.

14.3 Survival. The provisions of this Article 14 will survive the termination of this NGSA for a period of one (1) year.

14.4 Duty To Mitigate. Each Party agrees that it has a duty to mitigate damages and covenant that it will use Commercially Reasonable efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of this NGSA.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

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

15.1.1 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 NGSA;

15.1.2 it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this NGSA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due at its sole expense;

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

15.1.4 this NGSA constitutes a legal, valid, and binding obligation of Competitive Supplier, enforceable against it in accordance with its terms, and Competitive Supplier has all rights such that it can and will perform its obligations to the Municipality in conformance with the terms and conditions of this NGSA, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

15.1.5 no Bankruptcy is pending against it or to its knowledge threatened against it;

15.1.6 none of the documents or other written information furnished by or on behalf of Competitive Supplier to or for the benefit of the Municipality pursuant to this NGSA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

15.1.7 it will comply with the applicable provisions of the PSC Orders and any regulations or policies adopted pursuant thereto;

15.1.8 it will conduct its operations and activities under this NGSA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees and will require all Associated Entities to do the same;

15.1.9 it has exercised due diligence to review and has fully complied with all relevant regulations, requirements, and orders of FERC, and PSC including the PSC Orders; and

15.1.10 all information furnished by Competitive Supplier in response to the RFP for competitive natural gas supply services is true and accurate.

15.2 By The Municipality. As a material inducement to entering into this NGSA, Municipality hereby represents and warrants to Competitive Supplier as of the Effective Date as follows:

15.2.1 this NGSA constitutes the legal, valid, and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law;

15.2.2 the Local Law has been duly adopted;

15.2.3 the execution, delivery, and performance of this NGSA are within the Municipality's powers and have been duly authorized by all necessary action;

15.2.4 Municipality has all authorizations from applicable Governmental Authorities necessary for it to legally perform its obligations under this NGSA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

15.2.5 no Bankruptcy is pending or threatened against the Municipality.

**ARTICLE 16
[RESERVED]**

**ARTICLE 17
CHANGE IN LAW/NEW TAXES**

17.1 Change in Law. If after the Effective Date, a Change in Law or New Taxes are imposed that materially affects the economic benefits to a Party of this NGSA, the affected Party agrees to send written notice to the other Party, setting forth the Change in Law or New Taxes and reasonably demonstrating the effect of the same on the affected Party. The Parties agree to use their best efforts to amend this NGSA to give effect to the original intent of the Parties within thirty (30) days of the occurrence of such Change in Law or New Taxes. If the Parties are unable to agree upon an amendment to this Agreement within such thirty (30) day period, the adversely affected Party has the right to provide a written 10-day termination notice to the other Party, to terminate this Agreement. As an alternative to termination, if a Change in Law or New Taxes affects Competitive Supplier, and Competitive Supplier is incurring excess costs as a result thereof, then Competitive Supplier may recover such costs, and such amount will be allocated to and collected from Participating Consumers through applicable monthly invoice(s).

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

**ARTICLE 18
MISCELLANEOUS**

18.1 No Assignment Without Permission. Except in the event of the sale of all or substantially all of its retail natural gas business to an entity with credit and service ability to deliver on all facets of this NGSA reasonably acceptable to Municipality, Competitive Supplier will not assign this NGSA or any of its rights or obligations hereunder without the prior written approval of the Municipality, which consent will not be unreasonably withheld. Any assignment of this NGSA by Competitive Supplier, whether as the result of the sale of all or substantially all of Competitive Supplier's business related to this NGSA or otherwise, will be subject to the following requirements: (i) Competitive Supplier must provide the Municipality with notice of the proposed assignment at least thirty (30) days prior to such assignment, (ii) Competitive Supplier's assignee must agree in writing to be bound by the terms and conditions of this NGSA, and (iii) Competitive Supplier and its assignee must reasonably demonstrate to Municipality that the assignee has the technical experience and financial ability to fulfill all obligations of Competitive Supplier under this NGSA. Municipality may assign this NGSA with prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality and such assignment would not materially impair the rights and interests of Competitive Supplier under this NGSA, and consent will not be unreasonably withheld. The rights and obligations created by this NGSA will inure to the benefit of, and will be binding upon the successors and permitted assigns of the Parties.

18.2 Direct Marketing. Prior to the introduction of any new product or service that Competitive Supplier may wish to make available to Participating Consumers, Competitive

Supplier agrees to (i) give the Municipality and its CCA Administrator written notice of such new product or service, and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Municipality the possible inclusion of such new product or service in this or another aggregation program undertaken by the Municipality. Broad-based programs of Supplier that do not rely on unique knowledge or access gained through this NGSA will not constitute such “direct marketing.” Additionally, neither Municipality nor Competitive Supplier will be liable for marketing, offering, provision of products or services through any of its Associated Entities to Participating or Eligible Consumers if such activity does not utilize any data obtained by Competitive Supplier in connection with this NGSA and the trade name or service marks of Competitive Supplier are not used.

18.3 Notices. All notices and other communications required or permitted by this NGSA or by applicable law to be served upon or given to a Party by the other Party must be delivered by hand by reputable overnight courier; by courier service; sent by certified mail, return receipt requested, postage prepaid or by electronic mail, to the following address:

If to Competitive Supplier:

Direct Energy Services, LLC
910 Louisiana, STE B200
Houston, TX 77002
Attn: Vice President, NRG Home – Municipal Aggregations

with copy to:

Direct Energy Services, LLC
910 Louisiana, STE B200
Houston, TX 77002
Attn: Associate General Counsel, NRG Home

If to Municipality:

Town of Union
3111 E. Main St.
Endicott, NY 13760

Attn: Robert Mack, Town Supervisor

with copy to:

Alan Pope, Esq., Town Attorney
99 Corporate Dr.
Binghamton, NY 13904

with copy to:

CCA Administrator:

Mr. Javier Barrios - Managing Partner
232 Madison Avenue, 3rd floor
New York, NY 10016
Phone: (212) 741-3052 or 347-200-2604
javier@goodenergy.com
cc: John Berg at john@goodenergy.com

18.4 Changes In Emergency and Service Contact Persons. In the event that the name or telephone number of any emergency or Service Contact for Competitive Supplier changes, Competitive Supplier agrees to give prompt notice to the Municipality and the CCA Administrator in the manner set forth in Section 18.3. In the event that the name or telephone number of any contact person for the Municipality or CCA Administrator changes, Municipality agree to give prompt notice to the other Parties in the manner set forth in Section 18.3.

18.5 Entire NGSA; Amendments. This NGSA constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties. This NGSA may only be amended or modified by a written instrument duly executed by all Parties.

18.6 Force Majeure. If by reason of Force Majeure any Party is unable to carry out, in whole or in part, its obligations under this NGSA, such Party will not be deemed to be in default during the continuation of such Force Majeure, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives the other Parties written notice describing the Force Majeure; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the non-performing Party uses Commercially Reasonable efforts to remedy the cause or causes preventing it from carrying out its obligations. If an event of Force Majeure continues for a period of one hundred eighty (180) days or longer, any Party may terminate this NGSA by sending written notice to the other Parties in accordance with Section 18.3.

18.7 Expenses. Each Party will pay all expenses incurred by it in connection with its entering into this NGSA, including without limitation, all of its attorney's fees and expenses.

18.8 Independent Contractors; No Joint Venture. Each Party will perform all obligations under this NGSA as an independent contractor. Nothing in this NGSA constitutes any Party a partner, agent, or legal representative of the other Party or to create a joint venture, partnership, agency, employer-employee relationship, or any other relationship between the Parties, with each Party being solely responsible for its employees, agents, partners, or legal representatives. The obligations of the Municipality and Competitive Supplier are individual and neither collective nor joint in nature.

18.9 Joint Work Product. This NGSA is the work product of all Parties, and no rule of strict construction applies against any Party.

18.10 Counterparts. This NGSA may be executed in counterparts, each of which will be deemed an original and all of which will constitute a single agreement.

18.11 Waiver. No waiver of any breach of the terms of this NGSA will be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach will be deemed to be a waiver of any subsequent breach.

18.12 Advertising Limitations. Competitive Supplier agrees not to use, whether directly or through any of its Associated Entities, the name of the Municipality, or make any reference to the Municipality in any advertising or other information to be distributed publicly for marketing or educational purposes, without the Municipality's consent. Any proposed use of the name of the Municipality must be submitted in writing for review and prior written approval, which may be withdrawn through a notice in writing at any time. The Municipality acknowledges that Competitive Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license, or interest in this trademark and/or trade name is granted to the Municipality, and the Municipality agrees that it will not assert any right, license, or interest with respect to such trademark and/or trade name.

18.13 Press Releases. The Parties agree to joint review and approval and to cooperate in good faith prior to the issuance of any formal press release or public statement with respect to this NGSA, such cooperation to include agreement as to the form, substance and timing of such formal press release. Approval of press releases will not be unreasonably withheld. Either Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such press release or public statement is required by law, regulation, or stock exchange rules, provided that in such event, the Parties will use good faith efforts to agree as to the form, substance, and timing of such release or statement.

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

18.15 Survival of Obligation. Termination of this NGSA for any reason will not relieve the Parties of any obligation accrued or accruing prior to such termination.

18.16 No Third-Party Beneficiaries. This NGSA does not and is not intended to confer any rights or remedies upon any person other than the Parties.

18.17 Severability. If any provision of this NGSA is determined to be unenforceable, void or otherwise contrary to applicable law, rendered inapplicable, such determination will not operate to render any other provision of this NGSA unenforceable, void or contrary to applicable law, and this NGSA will continue in force in accordance with the remaining terms and provisions as if the unenforceable provision were never written; unless such condition invalidates the purpose or intent of this NGSA.

18.18 Governing Law and Forum. This NGSA will be interpreted under and governed by the laws of the State of New York without respect to conflicts-of-laws principles. Any litigation arising hereunder will be brought solely in the appropriate federal court in New York or appropriate state court sitting in Broome County, to whose jurisdiction the Parties hereby assent, waiving all objections to venue or forum.

**ARTICLE 19
REMEDIES**

19.1 General. Subject to the limitations set forth in Section 19.2 below and Article 4, the Parties reserve 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 NGSA.

19.2 Limitations. NO PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT

IN WITNESS WHEREOF, the Parties have caused this NGSA to be executed by their duly authorized representatives as of the respective dates set forth below.

DIRECT ENERGY SERVICES, LLC

Signature: 

Name: Elizabeth Killinger

Title: President

Dated: 02/08/2024

TOWN OF UNION

Signature: 

Name: Robert Mack

Title: Supervisor, Town of Union

Dated: 2/8/24

**EXHIBIT A
NATURAL GAS PRICES AND TERMS**

The price for all Participating Consumers located in Town of Union, Broome County, in the State of New York is quoted in \$ per Therm as follows:

Start date: Meter read dates on or after June 1, 2024

End date: Meter read dates on or after June 1, 2026

Meter read dates are based on the Distribution Utility's published cycle dates for the respective month. The month associated with the meter read may differ from the calendar month.

Rate Class	Price per Therm
Residential	\$0.532
Small Commercial	\$0.532

Price per Therm: The Price per Therm for Natural Gas Supply as stated in the table above includes natural gas, transport and storage, losses and will be fixed for the entire length of the Term. The Price per Therm does not include any Distribution Utility fees or charges including but not limited to Regional and Local Transmission or Taxes per sections 8.4.3 and 8.4.4.

The period of delivery of Natural Gas Supply will be consistent with the provisions of Article 4 and Exhibit A of this NGSA.

Competitive Supplier's Standard Credit Policy: Competitive Supplier will not require a credit review for any Participating Consumer in the Program, and will not require any Participating Consumer to post any security deposit as a condition for participation in the Program. Competitive Supplier may terminate service to a Participating Consumer and return such consumer to Default Service in the event that the Participating Consumer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

EXHIBIT B
TEMPLATE SALES AND CONSUMER ACCOUNTS DATA SUMMARY

Rate Code	Residential	Small Non-Residential
Standard Supply		
Municipality		
# of Default Accounts of Eligible Consumers		
	Therm	Therm
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		