

# RESOLUTION OF THE CITY COUNCIL

No. 261

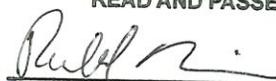
Approved June 12, 2024

RESOLVED, That the Members of the Providence City Council hereby Authorize Approval of the following Contract Award of an encumbrance by the Board of Contract and Supply in accordance with Section 21-26(b)(4) of the Code of Ordinances.

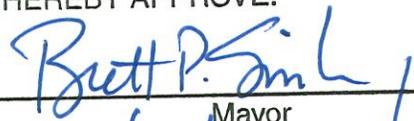
NRG Business Marketing, LLC  
(Department of Public Property)

\$450,000.00

IN CITY COUNCIL  
JUN 06 2024  
READ AND PASSED

  
RACHEL M. MILLER, PRESIDENT  
  
CLERK

I HEREBY APPROVE.

  
\_\_\_\_\_  
Mayor  
Date: 6/12/24



OFFICE OF THE INTERNAL AUDITOR  
*City of Providence*

May 1, 2024

Ms. Tina Mastroianni  
City Clerk's Office  
City of Providence  
25 Dorrance Street  
Providence, RI 02903

Dear Tina:

I am writing to request that the following requested contract award be submitted to the City Council and the Finance Committee for approval:

- **Department of Telecommunications**
  - Request to pay Interaction Insight Corporation for Support Maintenance in the amount of \$23,772 in accordance with the Code of Ordinances, Section 21-26 (b) (2).
  - Request approval to Piggyback the State MPA #395 with Motorola Solutions Inc. for Public Safety Communication Equipment in the amount of \$511,986.77 in accordance with the Code of Ordinance, Section 21.26 (b) (2).
- **Department of Finance**
  - Requesting Approval to enter into a contract with Banc of America Public Capital Corp (BAPCC) for Master Lease Financing in the amount of \$20,000,000.00 in accordance with the Code of Ordinances, Section 21-26 (b) (3)
- **Department of Information Technology**
  - Requesting approval to pay BSI for Software Support and Maintenance to calculate Tax Withholding Rates for City Payroll in the amount of \$14,298.64. In accordance with the Code of Ordinances, Section 21-26 (b) (2).
  - Request approval to pay Infor US, LLC for Annual Licenses and Support for the Infor/Lawson Platform in the amount of \$335,815.59. In accordance with the Code of Ordinances, Section 21-26 (b) (2).

- **Department of Public Safety, Police Department**
  - Request approval to pay Central Florida Yamaha, Inc. for Outboard Engines in the amount of \$66,483.00 in accordance with the Code of Ordinances, Section 21-26 (b) (2).
- **Department of Public Property**
  - Requesting Approval of an encumbrance with NRG Business Marketing, LLC for Natural Gas Service Bills for all Public Owned Building in the amount of \$450,000.00 in accordance with the Code of Ordinances, Section 21-26 (b) (4).
- **Department of Public Works**
  - Approval to amend the cap of Sidewalk, Road and Drainage Construction for Option Year 1 in the amount of \$250,000.00. In accordance with the Code of Ordinances, Section 21-26 (b) (5).

Sincerely,



Gina M. Costa  
Internal Auditor

Cc: John Arzoomanian, Department of Public Property  
Alejandro Tirado, Director of Purchasing  
Shomari Husband City Treasurer  
Lawrence Mancini, Chief Financial Officer  
Patricia Coyne-Fague Director of Public Works  
Oscar Perez Chief of Police  
Jim Silveria, Chief Information Officer  
Joseph Migliaccio, Director of Telecommunications



CITY OF PROVIDENCE  
MAYOR BRETT P. SMILEY

AMANDA PONTARELLI  
DEPUTY DIRECTOR OF PUBLIC PROPERTY

April 18th, 2024,

The Honorable Brett P. Smiley  
Chairman, Board of Contract and Supply

City Hall  
25 Dorrance Street  
Providence, RI 02903

RE: Requesting Approval of an Encumbrance with NRG Business Marketing, LLC for Natural Gas Service Bills for all Public Owned Buildings (February-June 2024)

ID Number: 45058

Account Code(s): 101- 01803-52430

Minority Participation: 0 % MBE, 0 %WBE

Dear Mayor Smiley,

The department of Public Property respectfully requests Approval of an Encumbrance with NRG Business Marketing, LLC for natural gas service bills for all public city buildings in an amount not to exceed \$450,000.00 in Fiscal Year 2024.

The Sustainability Department procured the city's natural gas supply through the Rhode Island League, REAP program. The League selected PowerOptions to administer the program and NRG as the supplier.

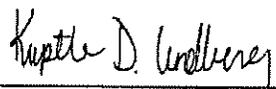
The city of Providence was approved a budget of \$1,268,238.00 to go towards Rhode Island Energy and NRG Business Marketing, LLC natural gas utility bills in Fiscal Year 2024.

Approximately, \$450,000.00 will cover the gas utilities charged through Rhode Island Energy.

Funds in the amount of \$450,000.00 will cover services billed for the months of February to June 2024; and are available in account 101- 01803-52430.

NRG Business Marketing, LLC  
J.P. Morgan Chase Manhattan Bank  
Routing 021000021  
Acct 304920169

  
Amanda Pontarelli, Deputy Director of Public Property

  
Finance

DEPARTMENT OF PUBLIC PROPERTY  
Providence City Hall | 25 Dorrance Street, Room 407 | Providence, Rhode Island 02903  
401 680 5300 ph | 401 455 0475 fax  
www.providenceri.gov

**NATURAL GAS PARTICIPANT AGREEMENT FOR POWEROPTIONS<sup>®</sup> MEMBERS**

Contract Number:

<b>BUYER:</b>			<b>SUPPLIER:</b>		
[City of Providence]			NRG BUSINESS MARKETING LLC		
[25 Dorrance Street]			804 Carnegie Center		
[Providence, RI, 02903]			Princeton, NJ 08540		
<b>Contact</b>	<b>Phone</b>	<b>Fax</b>	<b>Sales Manager</b>	<b>Phone</b>	<b>Fax</b>
Amanda Pontarelli	401-680-5504		Erik Everton	508-639-9485	

<i>Local Distribution Company ("LDC")</i>	Providence Gas
<i>LDC Transportation Rate Class</i>	Exhibit A
<i>Other LDC Services to be Elected</i>	
<i>Delivery Point(s)</i>	The interconnection between LDC and FT 2 Pool
<i>Business Meter(s)</i>	See Exhibit A
<i>Sales Tax Exempt Number</i>	

This Firm Natural Gas Participant Agreement for PowerOptions<sup>®</sup> Members (the "Agreement") is made and entered into as of this 18th day of September 2023 (the "Effective Date") by and between NRG Business Marketing LLC ("Supplier"), a Delaware limited liability corporation with offices located at 804 Carnegie Center, Princeton, NJ 08540 and City of Providence, ("Participant" or "Buyer") with offices located at 25 Dorrance Street, Providence, RI 02903. Supplier and Buyer are individually referred to herein as a "Party" and collectively as the "Parties."

**Background**

- A. Participant is a member in good standing of the PowerOptions<sup>®</sup> Program organized by PowerOptions, Inc., ("PowerOptions"), a non-profit corporation organized under the laws of the Commonwealth of Massachusetts and section 501(c)(4) of the Internal Revenue Code. PowerOptions organized and administers the PowerOptions<sup>®</sup> Program to help its members purchase energy products and energy-related services for facilities they own and/or operate.
- B. Supplier and PowerOptions have entered into the Amended and Restated PowerOptions<sup>®</sup> Natural Gas Program Agreement, dated December 15, 2020, amended by the First Amendment thereto, as of [April 6], 2022, and as further amended from time to time, governing the terms and conditions of Supplier's participation in the PowerOptions<sup>®</sup> Program (the "Program Agreement").
- C. Participant desires to procure natural gas from Supplier and Supplier desires to sell natural gas on the terms and conditions described herein.

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**Exhibits**

- Exhibit A - Firm Natural Gas Sales Agreement Pricing Attachment 1 to Exhibit A – Form of Pricing Confirmation
- Exhibit B - Form of Authorization Letter
- Exhibit C - Parent Guarantee
- Exhibit D - Natural Gas PRIME Program
- Exhibit E - Natural Gas Managed Product
- Exhibit F - Gas Recall Incentive Form
- Exhibit G - Terms of Service
- Exhibit H – Carbon Offset Agreement
- Exhibit I – Standalone Carbon Offset Agreement – Existing Participant
- Exhibit J – Natural Gas Curtailment Form

1. **SALE OF GAS:** Supplier agrees to sell and deliver on a 365-day, primary firm basis to the Delivery Point(s) for Buyer's account and Buyer agrees to purchase and cause to be received from Supplier, natural gas sufficient (including an amount sufficient to cover the LDC's tariff provision for natural gas used or retained, lost and/or unaccounted for by the LDC in conjunction with transportation from the Delivery Point(s) to the Buyer's facilities) to provide the Buyer with firm full requirements service under the terms hereof during the term of this Agreement. An account ("Account") is as defined by the relevant LDC and identified in the relevant version of Attachment 1 to Exhibit A (the "Pricing Confirmation") (including any Successor Account to such Account and any additional Account(s) served hereunder in accordance with Section 25)), and any mutually agreed upon amendments thereto, and includes all meters with respect to any such account (each, a "Meter").

2. **TERM:** This Agreement shall be effective from the Effective Date until 10/31/2024 but in no event shall the term hereof extend beyond October 31, 2025 (the "Term"). Upon request of a Member, PowerOptions may approve extension of the term beyond October 31, 2025. Such approval must be provided via email to the Supplier and the Member. Notwithstanding the foregoing, with respect to each Account of Buyer, the Term of this Agreement may remain in effect until the first date after October 31, 2025 that the meter(s) with respect to such Account(s) is (are) read by the relevant LDC.

3. **PROVISION OF DATA; CREDIT:**

(a) Provision of Data. By executing this Agreement and a letter in the form attached hereto as Exhibit B, Buyer authorizes its LDC(s) to provide Supplier and authorizes Supplier to provide to PowerOptions, Inc., subject to Section 19, the following data with respect to Buyer: historical consumption and load data; payment and credit history; types of service; meter readings; and any other information relevant to Buyer's current LDC(s) Account(s), which is available to Buyer consistent with any law or regulation. If necessary, Buyer shall directly request such information from its LDC(s) using a letter substantially in the form attached hereto as Exhibit B, and shall promptly relay to Supplier all such data received. Buyer shall not be responsible for fees, if any, charged by its LDC(s) for the LDC's provision of such data.

(b) Credit Provisions Applicable to Potential Buyers. Within five (5) Business Days (a "Business Day" is any weekday other than a day which is defined as a holiday by the New York Mercantile Exchange ("NYMEX") or any successor organization thereto) of Seller's receipt of Buyer's submittal of (i) a completed and signed version of Exhibit B, Form of Authorization Letter, and (ii) a Pricing Confirmation completed with respect to the descriptive information for at least one Account, including, with respect to such account, a copy of an LDC invoice dated within forty-five (45) days, and if the credit of Buyer does not meet Seller's reasonable standards and the most recent aggregate annual usage of Buyer's Accounts is greater than 5,000 decatherms, Supplier may, at its option, exercised by written notice within such five (5) Business Day period (which may be made by e-mail), request Buyer to provide Supplier with commercially reasonable credit assurance as a condition of effectuating the Agreement. Such credit assurance may consist, in Supplier's discretion, of the provision of an interest bearing deposit, letter of credit, parental guarantee or other means acceptable to Supplier ("Credit Assurance"). The amount of Credit Assurance requested by Seller will not exceed ninety (90) days of total contract exposure. The interest rate applicable to any Credit Assurance which is in the form of a cash deposit shall be equal to the customer deposit interest rate for LDCs approved by the regulatory authority of the state in which the accounts reside. If Buyer does not provide Credit Assurance to Supplier within five (5) Business Days of Supplier's request for same, Supplier may, by notice delivered within such five (5) Business Day period, decline to provide service until Credit Assurance is provided to the satisfaction of Supplier.

(c) Credit Provisions Applicable to Existing Buyers.

(i) If Buyer is rated by either Standard & Poor's ("S&P") or Moody's, in the event that Buyer's S&P or Moody's Sr. Unsecured or Underlying rating were to fall below BBB- or Baa3, respectively, at any time during the Term of this Agreement, Supplier may request Credit Assurance. The amount of Credit

Assurance requested by Seller will not exceed ninety (90) days of total contract exposure. Buyer shall provide such Credit Assurance within five (5) Business Days of such request.

(ii) If Buyer is not rated by either S&P or Moody's, if at any time during the Term of this Agreement, Supplier has Good Faith Credit Concerns (defined below) regarding Buyer, Buyer shall promptly provide to Supplier all reasonably requested documentation necessary for Supplier to obtain an accurate overview of Buyer's ability to continue to perform under this Agreement. If Supplier is not reasonably satisfied regarding Buyer's continued ability to perform following such review, Supplier may request that Buyer provide Credit Assurance(s) with respect to the Account(s) for which the Good Faith Credit Concerns arose. The amount of Credit Assurance requested by Seller will not exceed seventy (70) days of total contract exposure. Buyer shall provide such Credit Assurance(s) within five (5) Business Days, failing which, the Supplier may terminate this Agreement. Upon termination of this Agreement for any reason, any amounts paid as Credit Assurance by Buyer pursuant to this Section with respect to affected Accounts, including any accrued interest thereon (if applicable), shall be returned to Buyer within thirty (30) days of the date of termination, but only to the extent that such amounts have not been properly drawn upon by Supplier in respect of amounts owed by Buyer to Supplier pursuant to this Agreement.

For purposes of this Agreement, "Good Faith Credit Concerns" shall mean that Supplier has reasonable, objective commercial grounds for insecurity regarding Buyer's ability to perform all of its outstanding obligations under this Agreement including but not limited to a previous default, other than with respect to amounts escrowed by Buyer in connection with a good faith billing dispute.

(d) Unless an Event of Default with respect to Buyer exists, Buyer may add additional Accounts to this Agreement from time to time by submitting additional executed forms of Exhibits A, Attachment 1 and such additional Accounts shall be subject to the credit provisions set forth in this Section 3.

#### 4. CONTRACT PRICE:

(a) Participant shall select from one of the following contract price options:

(i) Fixed Basis and Commodity Contract Pricing Option:

Fixed basis price and commodity price (respectively "Basis Price" and "Commodity Contract Price", and together a "Contract Price") for the natural gas to be sold and purchased hereunder for a specific period ("Supply Period") within the Term of this Agreement shall be set forth in an executed version of the Pricing Confirmation, and unless otherwise specified, shall be applicable to all usage in each month for the respective Accounts. Supplier shall be responsible for all taxes and royalties relating to the production, transportation or sale of natural gas through the Delivery Point; provided, that if the Contract Price set forth in a Pricing Confirmation does not include sales tax, Supplier may increase the Contract Price to the extent necessary to cover federal, state or local sales taxes.

(ii) Indexed Price Option:

For natural gas to be sold and purchased hereunder for a specific period ("Supply Term Period") within the Term of this Agreement, if an Indexed Price Option shall be selected in an executed version of the Pricing Confirmation, unless otherwise specified, it shall be applicable to all usage in each month for the respective Accounts. The Contract Price for Accounts under this option will be the Gas Daily -Daily Price Survey Midpoint Index plus the Basis Premium, as defined in the executed Price Confirmation for all natural gas consumed daily. Supplier shall be responsible for all taxes and royalties relating to the production, transportation or sale of natural gas through the Delivery Point; provided, that if the Contract Price set forth in a Pricing Confirmation does not include sales tax, Supplier may increase the Contract Price to the extent necessary to cover federal, state or local sales taxes.

Buyer will be required to select the 0% Swing Option, must be daily metered, and only Accounts without a capacity assignment from an LDC will be eligible for this price option.

(iii) Combined Indexed Price and Fixed Basis and Commodity Contract Pricing Option:

A Buyer may amend the Indexed Price Option no more than 3 times to purchase a percentage of their Contract Monthly Volume (as defined in the executed Price Confirmation) under the Fixed Basis and Commodity Contract Pricing Option with the balance of the Contract Monthly Volume remaining under the Indexed Price Option.

The portion of the Contract Monthly Volume where Buyer has executed a fixed Commodity Contract Price cannot exceed the portion of the Contract Monthly Volume with a fixed Basis Price.

Buyer will be required to select the 0% Swing Option, must be daily metered, and only Accounts without a capacity assignment from an LDC will be eligible for this price option.

(iv) Swing Options:

Buyer may request a fixed Contract Price to be applicable to a specified monthly usage volume ("Contract Quantity" or "Benchmark Quantity") with usage variances from such stated quantities being priced using market prices or indices. The Swing Option, if any, shall be designated on the Pricing Confirmation.

The Swing Pricing Options a Buyer may request are +/- 10% from the Contract Quantity, +/- 0% from the Contract Quantity, or Daily Based Swing, or Monthly Based Swing, each as defined in Exhibit A.

(v) PRiME Commodity Contract Price Option:

Accounts are eligible for the PRiME Program for a structured approach to buying NYMEX natural gas commodity as defined in Exhibit A. Prior to initial execution of the PRiME Commodity Contract Price Option, Supplier and Buyer shall confer about the mechanics of the PRiME program to address the Buyer's risk tolerance and business objective. If Buyer seeks to proceed with the PRiME Commodity Contract Price Option, Buyer must execute a PRiME Amendment in the form attached hereto as Exhibit D.

(vi) Gas Portfolio Option: Buyers 25,000 dth per year and larger are eligible for Gas Portfolio advisory services ("Gas Portfolio") which are meant to assist with NYMEX triggering and other aspects of Buyer's procurement strategy. Gas Portfolio is a consultative energy strategy service and is a supplement to natural gas supply. Supplier will work with Buyer to understand Buyer's energy needs, provide information to Buyer to make informed buying and NYMEX triggering decisions and provide a platform to take action quickly and efficiently. If Buyer seeks to proceed with the Gas Portfolio Option, Buyer must execute a Natural Gas Managed Product in the form attached hereto as Exhibit E.

Gas Portfolio services include the following:

- Consultative support for development and implementation of customized procurement strategies and risk management to support Buyer's natural gas procurement goals and needs.
- Access to natural gas markets.
- Reports that support natural gas procurement, risk management, performance analysis and internal awareness of natural gas costs.
- Access to an energy advisor that specializes in the regional market and who will help Buyer determine a natural gas buying strategy specific to Buyer's needs. The energy advisor will assist with determining the frequency and types of ongoing communication necessary to meet the Buyer's needs such as strategy calls, distribution of market intelligence data and charts that illustrate forward and historical natural gas price trends.
- The following standard reports will be provided:
  - (a) A daily market update;
  - (b) A hedge monitoring report, customized to show current hedge position and NYMEX triggers and cost projections;

- (c) A price target tracking report that shows all price targets and current market prices levels;
- (d) Customized reports as needed to support customer 's energy procurement team; and
- (e) As applicable, all customer reports include benchmarking capability versus index prices, budgets, fixed price alternative, or whatever target has been provided by the customer.

(vii) Natural Gas Recall Option:

Accounts that are capable of burning an alternative fuel are also eligible for the Natural Gas Recall Option which allows the Buyer to switch between the alternative fuel and natural gas to take advantage of the rise and fall of market prices. Prior to initial execution of the Natural Gas Recall Option, Supplier and Buyer shall confer about the mechanics of the program. If Buyer seeks to proceed with the Natural Gas Recall Option, Buyer must execute a Recall Amendment attached hereto as Exhibit F.

(viii) Natural Gas Curtailment Option:

Buyers who are capable of reducing their consumption to take advantage of the rise and fall of market prices are eligible for the Natural Gas Curtailment Option. Prior to initial execution of the Natural Gas Recall Option, Supplier and Buyer shall confer about the mechanics of the program. If Buyer seeks to proceed with the Natural Gas Curtailment Option, Buyer must execute a Curtailment Amendment attached hereto as Exhibit J.

(ix) Carbon Offset Option:

Buyer may request a Carbon Offset option to purchase carbon credits to offset against their gas consumption. If Buyer chooses to proceed with the Carbon Offset option, Buyer shall initial the appropriate section on Attachment 1 to Exhibit A. Buyer acknowledges and agrees that the terms of this Agreement shall apply to the Carbon Offsets. In addition, the terms on Exhibit H, as attached hereto, will be applicable to their Carbon Offset purchase.

If Buyer chooses to purchase Carbon Offsets after a Pricing Confirmation has been executed, then a Standalone Carbon Offset Agreement will need to be entered into by the parties, the form of which is set forth on Exhibit I, attached hereto.

(b) If any Change in Law (defined below) occurs during the term of an executed Pricing Confirmation, then, subject to prior written approval by PowerOptions (such approval shall not be unreasonably withheld), Supplier may pass through to Buyer some or all of the incremental third-party costs or credits Supplier reasonably incurs to supply natural gas a result of such Change in Law, but only to the extent such costs or credits are (a) directly related to supplying natural gas to Buyer's Accounts which are the subject of such Pricing Confirmation and (b) are incurred in, and relate to, a period thirty (30) days or more following written notice of such Change in Law to Buyer (with a copy to PowerOptions) and ending with the expiration of the Pricing Confirmation. All billing of such Change in Law costs or credits with respect to Accounts which are the subject of a Pricing Confirmation shall occur with regular billing with respect to the subject Accounts, (b) be accompanied by documentation reasonably demonstrating that billed costs are eligible to be passed through hereunder and are properly calculated, and (c) be completed with the final regular bill with respect to such Account under such Pricing Confirmation.

"Change in Law" means, as to any Account, a substantial increase or decrease in Supplier's actual costs to supply natural gas pursuant to this Agreement that is caused by (i) a new, higher or lower charge or cost imposed on and payable by Supplier by the Federal Energy Regulatory Commission or its successor, or the LDC in which Buyer is located; (ii) increase or decrease in an existing charge or cost imposed by the Federal Energy Regulatory Commission or its successor, or LDC which was not anticipated at the time of the Agreement; or (iii) a new element of retail full requirements service imposed through law or regulation by the Commonwealth of Massachusetts, the State of Connecticut, or the State of Rhode Island, as applicable, or the United States.

- (c) Accounts or Meters Without Usage History: If an Account or associated Meter that is included

on an executed version of the Pricing Confirmation, has, at the time of request for a quotation of pricing, been then-recently established and is without sufficient consumption history or other information needed to develop a reasonable usage profile for quotation for the requested period of a Pricing Confirmation, but annual usage is reasonably expected to exceed 10,000 Dth or the Account is daily balancing, the Supplier and Buyer shall develop a mutually acceptable pattern of monthly usage for purposes of pricing the Account for up to one year. Such Account's fixed pricing for said year will, unless otherwise agreed by the Parties, be applicable to the agreed usage amounts, subject to any swing provisions applicable to each relevant period of monthly pricing. To the extent the Account's actual usage levels fall outside the allowance bandwidth, Contract Prices applicable to usage outside the band will be determined as described in Exhibit A for similar Swing Option usage.

(d) **Material Change in Use**

(i) In the event that Buyer's annual usage for any Enrolled Account (as defined below) exceeds thirty thousand (30,000) decatherms during the twelve calendar months preceding this Agreement, and Supplier has initiated delivery of natural gas to Buyer under this Agreement, Buyer shall provide Supplier 90 days advance notice of the following circumstances, each known as a "Material Change in Use":

- (1) Closure of any such Account enrolled with the LDC for supply by Supplier ("Enrolled Account");
- (2) A reduction of usage under any such Enrolled Account to zero consumption without closure of the Account; or
- (3) Any change in use within Buyer's control, such as Facility closings, planned equipment outages or replacements, new buildings or other uses of natural gas or other similar circumstance, including the installation or removal of a power generating facility, co-generation facility, absorption chiller or other non HVAC related process facility.

(ii) If Buyer has failed to provide 90 days' notice of a Material Change in Use as required in clause (i) above, Supplier may impose any charges incurred as a result of that Material Change in Use. Measurement of a Material Change in Use shall be defined pursuant to the below volume thresholds. Aggregation Annual volume shall be measured at each individual state level.

(iii) **If State Aggregation Volume is 1 – 999,999 (annual DTH), then:**

Buyer warrants that it has disclosed or will disclose to Supplier all plans to expand or reduce the size of any of its facilities that is a service location ("Facilities") during the Term of this Agreement if such expansion or reduction could reasonably be expected to increase or decrease Buyer's total monthly usage under all of Buyer's Enrolled Accounts by +/- 25% in the aggregate.

If Buyer has failed to provide 90 days' notice as required in subclause (i) above, then, at the individual participant level, Supplier may in its reasonable discretion pass through to Buyer any losses and/or costs incurred by Supplier related to a deviation of +/-25% from Contract Quantity (or, as applicable, estimated Contract Quantities). Any such deviation will be exclusive of variations relating to weather effects.

All billing of such costs shall occur with regular billing with respect to the subject accounts and be accompanied by documentation demonstrating that such costs were incurred by Supplier. This documentation will show, at a minimum:

- (1) Customer's actual usage for the applicable month; and
- (2) contract quantity for Customer for that month.

(iv) **If State Aggregation Volume is  $\geq$  1,000,000 (annual DTH), then:**

Buyer warrants that it has disclosed or will disclose to Supplier all plans to expand or reduce the size of any of its Facilities during the Term of this Agreement if such expansion or reduction could reasonably be expected to increase or decrease Buyer's total monthly usage under all of Buyer's Enrolled Accounts by +/- 10% in the aggregate.

If the total usage of natural gas usage of all PowerOptions participants enrolled accounts in the same state as Buyer does not vary by more than +/- 5% from total PowerOptions contract quantities in that state, Buyer will not be responsible for supply costs or penalties directly attributable to a Material Change in Use.

If there is a variation of more than +/-5% and Buyer has failed to provide 90 days' notice as required in subclause (j) above, then Supplier may in its reasonable discretion pass through to Buyer any losses and/or costs incurred by Supplier related to a deviation of +/-10% from Contract Quantity (or, as applicable, estimated Contract Quantities). Any such deviation will be exclusive of variations relating to weather effects.

All billing of such costs shall occur with regular billing with respect to the subject accounts and be accompanied by documentation demonstrating that such costs were incurred by Supplier. This documentation will show, at a minimum:

- (1) Customer's actual usage for the applicable month; and
- (2) contract quantity for Customer for that month.

## 5. **NOMINATIONS, PENALTIES AND BALANCING:**

(a) Applicable to Participant locations in the Commonwealth of Massachusetts and state of Rhode Island. Supplier shall be responsible for all nominations, balancing or similar charges or any penalties relating to the transportation of natural gas sold or purchased under a Participant Agreement, provided, that, if the Participant purchases balancing services pursuant to its LDC system, Supplier shall be responsible for the cost of such services and shall, at the option of the Buyer, either pay such cost directly or deduct such cost from amounts owed by the Buyer to Supplier.

(b) Applicable to Participant locations in the state of Connecticut. Supplier shall be responsible for all nominations and balancing activities relating to the transportation of natural gas sold or purchased under a Participant Agreement. The purchase price shall be inclusive of any LDC balancing charge or fee. Supplier will be responsible for any penalty or charge caused by the Supplier in course of its nominations and balancing activities.

6. **AGENCY:** By execution of this Agreement, Buyer hereby appoints Supplier to act as its exclusive agent to: (a) manage, nominate and schedule transportation service with the LDC from the Delivery Point(s) to the Business Meter(s) in accordance with the applicable LDC transportation tariff and this Agreement; (b) communicate directly with the LDC to balance scheduled and actual receipt and delivery of Buyer's gas pursuant to the applicable LDC transportation tariff and this Agreement; and (c) to do all other things necessary to perform the obligations set forth in Section 1 above. The agency herein created is a limited agency and Supplier's duties are specifically limited to those set forth above and no other rights or duties of any kind or nature are granted to, or imposed on, Supplier. Supplier and Buyer shall take such actions and execute such documents as may be required by Supplier, the LDC and other third parties to enable Supplier to perform hereunder. Supplier shall defend, indemnify and hold Buyer harmless from and against any and all costs, claims, damages, expenses, fees, penalties, suits and/or all actions of any kind, character or nature including reasonable attorneys' fees and court costs, that may arise out of Supplier's acts as agent for Buyer, except for those arising from Buyer's gross negligence or willful misconduct. Supplier shall notify Buyer within five (5) business days if Supplier learns that an Account of Buyer has been removed from Supplier's obligations, other than in connection with the expiration of a Pricing Confirmation. In addition, unless promptly instructed otherwise by Buyer upon learning of such change in supply status, Supplier shall use reasonable efforts to obtain reinstatement of responsibility for the Account's supply and observe the terms applicable to the remainder of its Pricing Confirmation. If a gap in Supplier's obligations extends for more than one billing cycle, the Parties shall implement a reasonable "true-up" to reimburse the Buyer for any difference between

the rate for the LDC commodity supply and the rate that would have been charged by Supplier, each as in effect during the affected period.

## 7. BILLING AND PAYMENT; DROPPED ACCOUNTS:

Supplier shall render an invoice each month to Buyer which shall indicate the quantities of gas delivered to Buyer at the Business Meter(s) during the billing cycle as adjusted by any gas allowance imposed by the LDC. If permitted by the LDC, and Buyer and Supplier agree, Supplier shall pay the LDC for all charges and costs of transporting such gas from the Delivery Point(s) to the Business Meter(s) and, subject to Section 1 of this Agreement, shall include such amount in the monthly invoice to Buyer and Buyer shall reimburse Supplier for all such costs paid to the LDC. Such amounts and costs shall not include gas used, retained, lost and/or unaccounted for by the LDC in connection with such transportation. If the actual quantities of gas delivered during the preceding billing cycle cannot be determined by the invoice date, Supplier shall render an invoice to Buyer for the estimated quantity of gas delivered to the Business Meter(s) based on the best information available to Supplier. Supplier shall make any necessary credits or debits on the next succeeding invoice to reflect actual quantities of gas delivered in the preceding, estimated billing cycle. Buyer shall pay Supplier the invoice amount, less any amounts owed by Supplier to Buyer within thirty (30) days after receipt of the invoice (the "Due Date"). If either Party in good faith disputes any amounts due hereunder, the disputing Party will contact the non-disputing Party promptly and the Parties will negotiate in good faith regarding such dispute for a period of no more than fifteen (15) Business Days. In the event the Parties are unable to resolve such dispute, the disputing Party shall pay the balance of the original invoice and either Party may exercise any remedy available to it in law or equity pursuant to this Agreement. Actions taken by a Party exercising its contractual rights will not be construed as a dispute for purposes of this Section. Payment shall be made at the address and in the method of payment designated on the invoice. Overdue amounts under this Agreement shall incur a late payment charge in the manner and at the rate the applicable LDC would be permitted to do so had Buyer been taking natural gas supply from such LDC.

### (a) Dropped Accounts

(i) Supplier shall, subject to Section 15, timely take such actions within its reasonable control, including without limitation filing a complete and accurate drop transaction notice with the relevant LDC, as shall be necessary and appropriate in order for Participant to receive Default Service with respect to an Account during any period in which no Contract Price shall be in effect with respect to such Account.

(ii) Supplier shall notify Participant within five (5) Business Days if Supplier learns that an LDC has removed an Account from supply service, other than in connection with the expiration of a Pricing Confirmation. In addition, unless promptly instructed otherwise by Participant upon learning of such change in supply status, Supplier shall use all reasonable efforts to obtain reinstatement of such Account's enrollment and observe the terms applicable to the remainder of its Pricing Confirmation. If a gap in Supplier's enrollment extends more than the first billing cycle due to a failure of Supplier to use reasonable efforts, the Supplier shall reimburse the Participant for any increase in costs associated with a positive difference between the rate for such Default Service and the relevant Contract Price each as in effect during the affected period.

8. **TAXES AND ROYALTIES:** Supplier shall pay and shall indemnify, defend and hold Buyer harmless from any claims for any tax or royalty for which Supplier is responsible hereunder including, without limitation, sales, excise and gross receipts taxes applicable to the gas sold hereunder to the Delivery Point(s). Buyer shall pay, and shall indemnify, defend and hold Supplier harmless from any claim for any tax for which Buyer is responsible hereunder including, without limitation, sales, excise and use taxes applicable to the gas sold hereunder that may be imposed at or after the Delivery Point(s). Further provisions relating to taxes and royalties are set forth in the description of the "Fixed Pricing Option," in Section 4 hereof.

9. **MEASUREMENT:** The measurement, calculation and computation of the quantity of gas delivered by Supplier at the Delivery Point(s) and the Business Meter(s) shall be determined in accordance with the

applicable transportation tariff of the LDC receiving gas for the account of Supplier at the Delivery Point(s). Supplier, with assistance from Buyer if necessary, shall cause the LDC to provide such data to Supplier on a timely basis.

10. **TITLE TO GAS, INDEMNITY AND WARRANTY:** Title to the gas bought and sold hereunder shall transfer from Supplier to Buyer at the Delivery Point(s). Subject to the limitations of Section 22, each Party shall be in exclusive control and possession of the gas bought and sold hereunder and responsible for any damage or injury caused thereby while such Party holds title to such gas except for injury and damage caused by the negligence of the other Party. Supplier warrants that it has the right to sell the gas hereunder and that it has good title to all gas sold by it to Buyer hereunder, free from liens and material adverse claims of any kind. Supplier shall indemnify, defend and hold Buyer harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from, out of or relating to adverse claims of any and all persons to the said gas or related charges thereon or relating thereto which attach before title to said gas passes to Buyer. Buyer shall indemnify, defend and hold Seller harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from, out of or relating to adverse claims of any and all persons to the gas or related charges thereon or relating thereto which attach after title to said gas passes to Buyer. **THE WARRANTIES SET FORTH IN THIS PARAGRAPH ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OR TRADE.**
11. **QUALITY AND PRESSURE:** The quality and pressure of gas delivered by Supplier at the Delivery Point(s) shall conform to the applicable tariff of the LDC.
12. **FORCE MAJEURE:** If an event of Force Majeure renders either Party wholly or partially unable to carry out its obligations hereunder, and if such Party so affected gives written notice and reasonably full particulars of said Force Majeure to the other Party within a reasonable time, then the Party giving notice, as long as, so far as and to the extent that it is rendered unable to perform its obligations by such Force Majeure shall be excused from its performance of such obligations, other than payment obligations accruing before the event of Force Majeure and payment for gas flows supplied by Supplier through and measured by the Business Meter, provided that the affected Party is using all reasonable efforts to restore its ability to perform its obligations hereunder. Notwithstanding the foregoing, neither Party shall be excused from the performance of obligations for which performance was due prior to the onset of such event of Force Majeure. For such purposes Force Majeure shall mean any cause which is beyond the reasonable control of the affected party and could not have been and cannot be reasonably avoided, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, act of the public enemy or terrorists, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricane, tornado, flood, accident to machinery or wells or lines of pipe, line or well freeze ups, partial or total failure of reserved firm transportation capacity, the binding order of any court or governmental authority of competent jurisdiction, any of which prevents or restricts performance hereunder and which has been resisted in good faith by all reasonable legal means, or any other similar cause which, by the exercise of due diligence, the party claiming Force Majeure is unable to prevent or overcome. Force Majeure does not include inability to pay, the economic hardships of a Party or the full or partial closures of a Buyer's facilities, unless such closure itself is due to Force Majeure.
13. **CUSTOMER SERVICE:** Supplier will become, to the maximum extent permitted under applicable rules, the principal point of contact for Buyer's firm natural gas. PowerOptions shall have the right, but not the obligation, to protect the interests of Buyer and to coordinate the exercise by Buyer of their rights in such manner as both Participant and PowerOptions deem appropriate. Buyer authorizes Supplier, at PowerOptions' option, from time to time, to provide PowerOptions with all information provided by Supplier to Buyer, including without limitation billing, consumption and load data.
14. **GOVERNING LAW; VENUE:** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, the State of Connecticut, or the State of Rhode Island,

as applicable based on Participant's location, other than those relating to choice or conflict of law. Any action at law, suit in equity or judicial proceeding arising from or in connection with, out of or relating to this Agreement shall be litigated only in the Courts of the Commonwealth of Massachusetts. The Parties waive any right they may have to transfer or change the venue of any litigation resulting hereunder. Nothing in this Agreement shall displace the applicability of any federal law or the jurisdiction of the Massachusetts Department of Public Utilities, the Connecticut Department of Public Utilities, the Rhode Island Public Utilities Commission, the Federal Energy Regulatory Commission, or any other regulatory agency or body.

#### 15. DEFAULT AND TERMINATION:

(a) **Event of Default.** An event of default (an "Event of Default") shall be deemed to exist upon the occurrence of any one or more of the following events:

(i) failure by either Party to meet any payment obligation hereunder if such failure continues for a period of (15) days following written notice of such failure;

(ii) failure by either Party to perform fully any other material obligation hereunder if such failure continues for a period of thirty (30) days following written notice of such failure;

(iii) if by order of a court of competent jurisdiction, a receiver or liquidator or trustee of either party, or of any of the property of either Party, shall be appointed, or, if by decree of such a court, either Party shall be adjudicated bankrupt or insolvent, or any substantial part of the property of such Party shall have been sequestered, or if a petition to declare bankruptcy or to reorganize either Party pursuant to any of the provisions of the federal bankruptcy code, as it exists from time to time, or pursuant to any other similar state statute applicable to such party in effect from time to time shall be filed against such Party;

(iv) if either Party shall file a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consent to the filing of any bankruptcy or reorganization petition against it under any similar law, or, without limitation to the generality of the foregoing, if either Party shall file a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the federal bankruptcy code as it exists from time to time, or pursuant to any similar state statute applicable to such Party in effect from time to time, or an answer admitting the material allegations of a petition filed against it in such a proceeding, or if either Party shall make an assignment for the benefit of its creditors, or if either Party shall admit in writing its inability to pay its debts generally as they become due, or if either Party shall consent to the appointment of a receiver or receivers, or trustee or trustees, or liquidator or liquidators of it or all or any part of its property; or

(v) failure of Supplier to cause NRG Energy, Inc. to maintain in effect, at all times during the Term, the Participant Guarantee in accordance with Section 16 hereof, unless Supplier, at least five (5) Business Days prior to termination of the Participant Guarantee, provides an alternate security in form reasonably acceptable to Participant and PowerOptions, it being understood and agreed that for purposes of determining the acceptability of any alternate security, Participant hereby authorizes PowerOptions to act on its behalf in making such determination.

(b) **Remedies.** Upon the occurrence and during the continuation of any Event of Default hereunder, the party not in default shall have the right:

(i) following all applicable notice and cure periods, to terminate this Agreement with respect to the Account(s) which is the subject of the Event of Default, if less than all, upon written notice to the defaulting Party if the Event of Default is then continuing; in such event, the defaulting Party shall be obligated to pay to the non-defaulting Party Actual Damages (as defined below), if any, resulting from such termination; provided further that the non-defaulting Party retains the right to terminate this Agreement with ten (10) days' prior written notice if an Event of Default occurs pursuant to Section 15(a)(iii) or Section 15(a)(iv) above;

and/or

(ii) to pursue any other remedy under this Agreement or now or hereafter existing at law or in equity or otherwise.

For purposes of this Agreement, "Actual Damages" means the total amount of the loss that the non-defaulting Party (the "Damaged Party") would experience as a result of termination. Actual Damages shall be calculated by multiplying the volume in the remaining portion of the Supply Period by:

- (A) where Supplier is the Damaged Party, in any Supply Period, the positive difference, if any, obtained by subtracting the market value of the Commodity Price (the equivalent NYMEX strip price) and Basis Price for the remaining Supply Period of such terminated Account(s), from the Contract Price of the natural gas for the remaining Supply Period of such terminated Account(s), in each case as determined by Supplier in a commercially reasonable manner, with evidence of such calculation provided to Participant; and
- (B) where Buyer is the Damaged Party, in any Supply Period, the positive difference, if any, obtained by subtracting the Contract Price from the purchase price at which Buyer obtains alternative natural gas supply to cover such requirements during the remaining Supply Period of such terminated Account(s). To the extent these price components of the alternative supply are not clearly stated, they shall be determined using commercially reasonable methods. The price paid by Buyer to its LDC(s) for alternative natural gas supply for such terminated Account(s) shall be deemed "commercially reasonable."

Regarding each Account, termination shall be effective on the date of the next scheduled meter reading for said Account, unless 1) Supplier has not submitted the required "drop customer" transaction within the applicable LDC guidelines, in which case the effective date of termination shall be the next subsequent meter reading date after the "drop customer" transaction has been properly submitted (Supplier shall make all reasonable efforts to submit the required "drop customer" notice promptly), or 2) in the event of a default by Supplier, Buyer does not either inform the LDC of the termination or initiate supply service with another supplier within the applicable LDC guidelines, in which case the effective date of termination shall be the next subsequent meter reading date. Notwithstanding the foregoing, the date on which an Account is dropped from Supplier's LDC pool shall be deemed to be the date of the termination of such Account.

16. **ULTIMATE GUARANTEE:** The Supplier covenants and agrees that, it shall cause NRG Energy, Inc., a Delaware corporation, the ultimate corporate parent of the Supplier ("Ultimate Parent"), to at all times during the Term of the PowerOptions Program Agreement and this Agreement maintain a guarantee to PowerOptions and all Participants in the PowerOptions Program in the form attached hereto as Exhibit C and such guarantee shall cover, without limitation, any and all damages and other costs in accordance with Section 15 above.

17. **THIRD-PARTY BENEFICIARIES:** There are no third-party beneficiaries to this Agreement and none are intended by the parties.

18. **EQUAL EMPLOYMENT OPPORTUNITY:** The Equal Employment Opportunity Clause required under Executive Order No. 11246, the affirmative action commitment for veterans, set forth in 41 CFR 60-250.4, the affirmative action clause for handicapped workers, set forth in 41 CFR 650-741.4, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are included by reference in this Agreement, and Supplier certifies, warrants and covenants that it has and will at all times comply with the requirements contained therein to the extent required thereby.

19. **CONFIDENTIALITY:** Each Party shall, subject to its obligations under applicable law, use reasonable efforts to maintain the confidentiality of any confidential information provided to it by the other Party. All of Buyer's data that Supplier obtains through or in connection with this Agreement belongs to Buyer and shall be provided as requested to Buyer in electronic format, if available and so requested, without cost, upon five (5) business days' notice. Supplier further agrees to keep confidential Buyer's data so obtained and to restrict access to such information

to only PowerOptions and to those employees of Supplier and/or third parties who need such access to enable Supplier to perform its services under this Agreement and shall inform such personnel of the confidential information. Supplier shall be responsible for its employees' compliance with the terms of this Agreement. Supplier shall not be responsible for any cost, claims or damages related to or arising out of PowerOptions' use of such confidential information.

20. **ASSIGNMENT:** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, provided that this Agreement shall not be transferred or assigned, by operation of law or otherwise, by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment in violation of this Section 20 shall be null and void.

21. **NOTICES:** Any notice request, demand or statement provided for in this Agreement shall be in writing and directed to the addresses specified above on page 1. Any Party may change its address upon notice. All notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, certified mail (return receipt requested), first class mail or hand delivered. If given by facsimile or mutually acceptable electronic means, notice shall be deemed given on the date sent if by 4:00 p.m. ET and by the next Business Day if sent on or after 4:00 p.m. ET. If sent in writing by first class mail, notice shall be deemed given on the second Business Day following deposit in the United States mail, properly addressed, with postage prepaid. If sent by same-day or overnight delivery service, notice shall be deemed given on the day of delivery.

22. **LIMITATION OF LIABILITY:** For breach of any provision for which an express remedy or measure of damages is provided in this Agreement the liability of the defaulting Party shall be limited as set forth in such provision and all other damages or remedies hereby are waived. If no remedy or measure of damages is expressly provided, the liability of the defaulting Party shall be limited to direct damages only and all other damages and remedies are waived. Notwithstanding the foregoing, if applicable, direct damages for failure of Supplier to deliver gas pursuant to this Agreement shall include those costs and expenses of Buyer in arranging any alternative supply of gas that are provided for in the definition of "Actual Damages". IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, DIRECTLY OR INDIRECTLY, INCLUDING WITHOUT LIMITATION THROUGH OBLIGATIONS TO INDEMNIFY THIRD PARTIES, FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, DOWNTIME COSTS OR OTHER BUSINESS INTERRUPTION DAMAGES, LOSS OF USE OF ANY PROPERTY, COST OF SUBSTITUTE EQUIPMENT OR FACILITIES, WHETHER ARISING BY STATUTE, IN TORT, CONTRACT OR OTHERWISE. The Parties hereby release PowerOptions from any liability arising from or relating to this Agreement or the relationship between the Parties. This provision shall survive the expiration or early termination of this Agreement.

Notwithstanding anything herein to the contrary, the claims limits of the Commonwealth of Massachusetts, or any other governmental subdivision thereof subject to the claims limits of the Massachusetts Tort Claims Act, G.L. c. 258 (hereinafter referred to as the "Governmental Entity") shall apply and nothing herein is intended to constitute a waiver or indication of the intent to waive the protections of G.L. c. 258 by the Governmental Entity.

23. **REPRESENTATIONS AND WARRANTIES:** Each Party warrants and represents to the other that: (1) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (2) it is authorized and qualified to do business in the jurisdictions necessary to perform under this Agreement; (3) the execution, delivery and performance of this Agreement are duly authorized and do not violate any governing documents or any contracts to which it is a party or any laws, rules or regulations applicable to it; (4) there is no material event(s) or other agreement(s) which would impair that Party's right, authority or ability to execute this Agreement and otherwise consummate the transactions contemplated by this Agreement; (5) this Agreement is a forward contract; and (6) Supplier is not a "utility" as defined in the United States Bankruptcy Code.

The above Representations and Warranties shall be continuing obligations of the Parties throughout the Term.

With respect to the services to be supplied under this Agreement, the Parties acknowledge and agree that, no warranty, guarantee or other obligation of PowerOptions is expressed or implied with respect to its organization of the natural gas program or any actions relating to the execution of this Agreement. In addition, the Parties acknowledge and agree that nothing in this Agreement or any other document obligates PowerOptions or any of its employees and agents to assume any responsibility or to express any opinion, personal or otherwise, to Buyer with regard to Buyer's right and obligation to make its own decision with respect to choosing to enter into this Agreement with Supplier.

24. **WAIVER AND AMENDMENT:** Any waiver by either Party of any of the provisions of this Agreement must be made in writing, and shall apply only to the instance referred to in the writing, and shall not, on any other occasion, be construed as a bar to, or a waiver of, any right either Party has under this Agreement. The Parties may not modify, amend, or supplement this Agreement except by a writing signed by the Parties hereto.

25. **MISCELLANEOUS:** Either Party's failure to insist upon strict performance of any provision herein shall not constitute a waiver of, or estoppel against asserting the right to require such performance in the future. Any change, modification or amendment of this Agreement shall be in writing and signed by the Parties hereto. In the event that any provision(s) contained herein should be found to be unenforceable in any respect such finding shall not affect any other provision of this Agreement, and this Agreement shall then be construed as if such unenforceable provision(s) had never been contained herein.

The monthly gas prices attached as Exhibit A and the authorization letter attached as Exhibit B contain additional provisions of this Agreement and are incorporated herein by reference.

This Agreement, inclusive of all Exhibits, contains the entire agreement between the Parties and there are no prior or contemporaneous, written or oral, promises, representations, agreements or warranties affecting it.

NRG BUSINESS MARKETING LLC

[City of Providence]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Stephen E. Henson*  
Stephen E. Henson  
Vice President

Date: 2023-09-20  
12:36+05:30

DocuSigned by:

*Amanda Pontarelli*

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**EXHIBIT A**

**FIRM NATURAL GAS SALES AGREEMENT PRICING**

### 1. Fixed Basis and Commodity Pricing Option

For each Account, the price of the gas delivered to the Delivery Point shall be equal to the sum of the Basis Price plus the applicable monthly NYMEX natural gas Commodity Contract Prices for the period of supply selected by Buyer, each as shown on and as of the date indicated on an executed Pricing Confirmation in the form of Attachment 1 of this Exhibit A, plus costs incurred for transportation of such gas on the LDC gas systems, if paid by Supplier, in all cases subject to adjustment in accordance with Section 4 of the Agreement.

With respect to each Account, but only with respect to the pricing of the Contract Quantity for Accounts subject to the Swing Pricing Options (described below):

- (a) if the initial period of supply for which NYMEX natural gas commodity pricing or basis pricing is selected for any Account is less than the full Term of this Agreement for some percentage of the Participant's supply (up to 100%), then Supplier shall offer to supply Buyer with respect to some or all of the remaining Term of this Agreement in advance of the expiration of the initial, and any subsequent, period of supply, such subsequent period being intended to be for the remaining months of the Agreement Term, but may be for shorter periods; and
- (b) with respect to Basis Prices, if Buyer has not accepted the offer described in (a) above three (3) Business Days before the expiration of the then-current basis pricing, then the Basis Price for each such Account shall be established for only the immediately following month as the Basis Price applicable to Buyer established by Supplier under the PowerOptions Program on the 5<sup>th</sup> Business Day before the end of such month.

### 2. Fixed Basis and Float NYMEX

With respect to NYMEX natural gas commodity pricing, if Buyer has not accepted the offer described in 1(a) above by three (3) Business Days before the expiration of the then current commodity pricing, then the price for the next month will be established as the settlement price for the succeeding month established on expiration.

### 3. Swing Options

If a Swing Option is selected by Buyer, Basis Prices for consumption volumes outside the swing bandwidth will be subject to a premium or discount per Table 1 below.

The degree of variation in consumption is expressed as a bandwidth or a percentage ("swing") above or below the monthly volume agreed to in Exhibit A, Attachment 1 to the Participant Agreement. See Table 1 and product descriptions below.

**Exhibit A – Table 1  
Massachusetts**

Product	Contract Volume Purchased at Contract price		Price for Volume Outside of Product Swing Bandwidth					
	Minimum	Maximum	Gas Daily Indexes	LDC/ Location	*Winter Basis Premium (Excess)	**Winter Basis Discount	**Summer Basis Premium (Excess)	**Summer Basis Discount (Deficient)
1. Full Plant (unlimited swing)			(New Specific Points)		<b>Proposed Seasonal</b>			
2. Monthly Swing <sup>1,4</sup>	90% & 100%	110% & 100% Contract Volume	Algonquin CityGates	All LDC's	\$0.40	(\$0.30)	\$0.20	(\$0.15)
3. Monthly Swing <sup>1,2</sup>	90% & 100%	110% & 100% Contract Volume	TGP Z6 South	Nstar/Baystate Springfield/ Berkshire	\$0.40	(\$0.30)	\$0.20	(\$0.15)
4. Monthly Swing <sup>1,2</sup>	90% & 100%	110% & 100% Contract Volume	TGP Z6 North	Lawrence/ Boston/ Colonial/ Essex/Fitchburg	\$0.40	(\$0.30)	\$0.20	(\$0.15)
5. Daily Swing <sup>1,4</sup>	90% & 100%	110% & 100% Contract Volume	Algonquin CityGates	All LDC's	\$0.23	(\$0.15)	\$0.12	(\$0.07)
6. Daily Swing <sup>1,2</sup>	90% & 100%	110% & 100% Contract Volume	TGP Z6 South	Nstar/Baystate Springfield/ Berkshire	\$0.23	(\$0.15)	\$0.12	(\$0.07)
7. Daily Swing <sup>1,2</sup>	90% & 100%	110% & 100% Contract Volume	TGP Z6 North	Lawrence/ Boston/ Colonial/ Essex/Fitchburg	\$0.23	(\$0.15)	\$0.12	(\$0.07)

\*Winter is described as months November - March      \*\*Summer is described as months April - October

<sup>1</sup> Index for bandwidth will be posted in the Gas Daily publication under the heading Algonquin Citygates or Tennessee Zone 6 Delivered. If during the term of this Agreement a new Gas Daily index is published to reflect the market value to new or revised LDC delivery points, Supplier may modify Exhibit A Table 1, providing documentation to the Participant to support the change, with a copy provided to PowerOptions. The Pricing Confirmation (Attachment 1 to Exhibit A) will be revised to account for such new publication.

<sup>2</sup> Specific LDC Delivery Point: If, during the term of this Agreement, a delivery point becomes misaligned to the market, Supplier reserves the right to change Basis Premiums/Discounts for Members' or Participants' forward terms. Supplier will provide documentation to the Participant to support the change with a copy to PowerOptions. Supplier will maintain the pricing methodology pursuant to the Program Agreement with PowerOptions.

**Connecticut**

Product	Volume Purchase at Contract Price		Index Selected for Settlement	LDC/Location	Winter Basis Premium (Excess)	Winter Basis Discount (Deficient)	Summer Basis Premium (Excess)	Summer Basis Discount (Deficient)
	Minimum	Maximum						
1. Full Plant (unlimited swing)								
8. Monthly Swing (1,2,3)	90% & 100%	110% and 100%	Algonquin Citygates	All CT LDCs (AGT U/S Cromwell)	\$0.30	(\$0.40)	\$0.20	(\$0.20)
9. Monthly Swing (1,2,3)	90% & 100%	110% and 100%	TGP Z6 South / TETCO M3	Z6 300L proxy	TGP Z6 South	TETCO M3 + \$0.1	TETCO M3 + \$0.25	TETCO M3 - \$0.1
10. Daily Swing (1,2,3)	90% & 100%	110% and 100%	Algonquin Citygates	All CT LDCs (AGT U/S Cromwell)	\$0.15	(\$0.20)	\$0.05	(\$0.10)
11. Daily Swing (1,2,3)	90% & 100%	110% and 100%	TGP Z6 South / TETCO M3	All CT LDCs (TGP Z6 300L proxy)	TGP Z6 South	TETCO M3 + \$0.1	TETCO M3 + \$0.25	TETCO M3 - \$0.1

<sup>1</sup> Index for bandwidth will be posted in the Gas Daily publication under the heading "Algonquin Citygates", "Tennessee, zone 6, del. South", or "Tx. Eastern, M-3". If during the term of this Agreement a new Gas Daily index is published to reflect the market value to new or revised LDC delivery points, Supplier may modify Exhibit A Table 1, providing documentation to the Participant to support the change, with a copy provided to PowerOptions. The Pricing Confirmation (Attachment 1 to Exhibit A) will be revised to account for such new publication.

<sup>2</sup> Specific LDC Delivery Point: If, during the term of this Agreement, a delivery point becomes misaligned to the market, Supplier reserves the right to change Basis Premiums/Discounts for Members' or Participants' forward terms. Supplier will provide documentation to the Participant to support the change with a copy to PowerOptions. Supplier will maintain the pricing methodology pursuant to the Program Agreement with PowerOptions.

<sup>3</sup> Buyer basis price shall be inclusive of CT balancing fee.

### Rhode Island

Product	Volume Purchase at Contract Price		Index Selected for Settlement	LDC/Location	Winter Basis Premium (Excess)	Winter Basis Discount (Deficient)	Summer Basis Premium (Excess)	Summer Basis Discount (Deficient)
	Minimum	Maximum						
1. Full Plant (unlimited swing)								
12. Monthly Swing (1,2)	90% & 100%	110% and 100%	Algonquin Citygates	National Grid RI	\$0.55	\$ (0.20)	\$0.35	\$ (0.15)
13. Daily Swing (1,2)	90% & 100%	110% and 100%	Algonquin Citygates	National Grid RI	\$0.25	\$ (0.10)	\$0.15	\$ (0.10)

<sup>1</sup> Index for bandwidth will be posted in the Gas Daily publication under the heading "Algonquin City-gates". If during the term of this Agreement a new Gas Daily index is published to reflect the market value to new or revised LDC delivery points, Supplier may modify Exhibit A Table 1, providing documentation to the Participant to support the change, with a copy provided to PowerOptions. The Pricing Confirmation (Attachment 1 to Exhibit A) will be revised to account for such new publication.

<sup>2</sup> Specific LDC Delivery Point: If, during the term of this Agreement, a delivery point becomes misaligned to the market, Supplier reserves the right to change Basis Premiums/Discounts for Members' or Participants' forward terms. Supplier will provide documentation to the Participant to support the change with a copy to PowerOptions. Supplier will maintain the pricing methodology pursuant to the Program Agreement with PowerOptions.

**Full Plant Product (Unlimited Swing):** This product allows the Buyer to secure a price that allows them to consume monthly gas as agreed to in Attachment 1 to Exhibit A to the Participant Agreement. This product is a full firm product and includes no swing or bandwidth provision by individual account or in aggregate. Pricing for this product option is based on the understanding that load variations can and do occur primarily due to changing weather patterns, which are beyond the Buyer's control, and unanticipated changes in process requirements.

**Swing (Bandwidth) Products:** If Buyer anticipates changes in load due to equipment change-out or revised production scheduling that could cause consumption to fall outside the bandwidth implied by the swing election and contract volumes agreed to, such Buyer could benefit from one of the Swing products instead. Under Products 2 and 3, volumes consumed in excess of the maximum will be purchased and sold at the index price plus a premium, where the premium reflects the size of the bandwidth and whether the index is published monthly or daily. Volumes not consumed, i.e., below the minimum ("deficient volumes") will be deemed automatically sold back to the Supplier at a discount to the index price, where the size of the discount reflects the size of the bandwidth offered and whether the index is published monthly or daily.

**Monthly Based Swing:** Under the Monthly Based Swing Option, the determination of the Contract Price applicable to usage volumes that fall outside the Contract Quantity bandwidth for Accounts will be as follows: a) monthly usage in excess of the bandwidth will be priced at the monthly average of the Gas Daily Index plus the Basis Premium, as defined in the executed form Attachment 1 and as shown in Table 1, b) monthly usage less than the Contract Quantity bandwidth, will be priced at the monthly average Gas Daily Index minus the Basis Discount also defined in Attachment 1 and shown in Table 1. The Gas Daily Index will equal the average of the midpoint prices for the Algonquin or Tennessee Citygates index, as applicable to the Account, published for deliveries on each day of the month under the heading "Daily Price Survey" in Gas Daily. As applied in this provision, the Gas Daily Index shall be as applicable to the respective days of each calendar month of a billing cycle. If a day does not fall on a Business Day, the index charge will be the price published on the next Business Day, provided, however, that if the next Business Day is in the following month, the Index charge will be the price published on the preceding Business Day.

Buyer shall not be responsible for any LDC-imposed charges for balancing services and, if

requested to incur and pay for such charges, Buyer will be reimbursed by Supplier upon presentation of evidence of such amount. For locations in the state of Connecticut, Buyer's basis price shall be inclusive of any LDC balancing charges or fees. Supplier shall be obligated to deliver to the Delivery Point a quantity of gas sufficient to meet Buyer's delivered metered quantity, including the amount of gas required by the LDC under its tariff for fuel use and losses.

If Buyer is subject to an LDC's mandatory upstream capacity assignment, it shall assign its upstream capacity rights to Supplier for the duration of any Pricing Confirmation. Supplier shall pay the monthly cost of the upstream capacity to the LDC in a timely manner. Supplier's recovery of the upstream capacity costs, if any, is included in the Basis Price shown on Attachment 1.

**Daily Based Swing:** For the Daily Based Swing product, the daily Contract Quantity will be determined by dividing the Contract Monthly Volume (as defined in the executed Price Confirmation) by the number of days in the month (the "Daily Contract Quantity").

Under the Daily Based Swing Option, the determination of the Contract Price applicable to usage volumes that fall outside the Daily Contract Quantity bandwidth for Accounts will be as follows: Buyer will pay the Gas Daily -Daily Price Survey Midpoint Index plus the Basis Premium, as defined in the executed Attachment 1 and as shown on Table 1,2,and 3, for all natural gas consumed daily in excess of 100% of the Daily Contract Quantity. If Buyer uses less than 100% of the Daily Contract Quantity then, (i) if the Gas Daily - Daily Price Survey Midpoint Index is greater than the Contract Price, Supplier will credit Buyer's Account an amount obtained by subtracting the Contract Price from the Gas Daily - Daily Price Survey Midpoint Index of the deficient quantity minus the Basis Discount as defined in the executed Attachment 1 and as shown on Table 1 and (ii) if the Gas Daily - Daily Price Survey Midpoint Index is less than the Contract Price, Supplier will debit Buyer's Account an amount obtained by subtracting the Gas Daily- Daily Price Survey Midpoint Index minus the Basis Discount from the Contract Price of the deficient quantity as defined in the executed Attachment 1 and as shown on Table 1.

The Gas Daily – Daily Price Survey Midpoint Index will equal either "Algonquin Citygates", "Tennessee Zone 6 Delivered South" or "Tx. Eastern, M-3", published for deliveries on each day of the billing cycle under the heading "Daily Price Survey" in Gas Daily. If a day does not fall on a Business Day, the index charge will be the price published on the next Business Day, provided, however, that if the next Business Day is in the following month, the Index charge will be the price published on the preceding Business Day. If on any day the agreed upon index does not publish, Supplier shall replace with a commercially reasonable replacement index for that day.

Buyer shall not be responsible for any LDC-imposed charges for balancing services and, if requested to incur and pay for such charges, Buyer will be reimbursed by Supplier upon presentation of evidence of such amount. For locations in the state of Connecticut, Buyer's basis price shall be inclusive of any LDC balancing charges or fees. Supplier shall be obligated to deliver to the Delivery Point a quantity of gas sufficient to meet Buyer's delivered metered quantity, including the amount of gas required by the LDC under its tariff for fuel use and losses.

If Buyer is subject to an LDC's mandatory upstream capacity assignment, it shall assign its upstream capacity rights to Supplier for the duration of any Pricing Confirmation. Supplier shall pay the monthly cost of the upstream capacity to the LDC in a timely manner. Supplier's recovery of the upstream capacity costs, if any, is included in the Basis Price shown on the Price Confirmation.

#### 4. Indexed Priced Options

Under the Index Priced Options, the determination of the Contract Price applicable to usage volumes for Accounts will be as follows: Buyer will pay the Gas Daily -Daily Price Survey Midpoint Index plus a per Dth premium that is mutually agreed upon, for all natural gas consumed daily. The Gas Daily – Daily Price Survey Midpoint will equal the midpoint prices either Algonquin Citygates or Tennessee Zone 6 Delivered, published for deliveries on each day of the billing cycle under the heading "Daily Price Survey" in Gas Daily. If a day does not fall on a Business Day, the index charge will be the price

published on the next Business Day, provided, however, that if the next Business Day is in the following month, the Index charge will be the price published on the preceding Business Day.

Buyer will be required to select the 0% Swing Option, must be daily metered, and only Accounts without a capacity assignment from an LDC will be eligible for this price option.

### ATTACHMENT 1 TO EXHIBIT A

PowerOptions Gas Group Purchasing Program 2019-2025- Participant Agreement - SUPPLIER: NRG Business Marketing LLC  
 Attachment 1 to Exhibit A (Pricing Confirmation)

Page 1 of this Pricing Confirmation establishes prices only for each account listed on Page 2 of this Pricing Confirmation. All accounts on this Pricing Confirmation sheet are priced the same. Pricing for additional terms within the Agreement for these accounts will be added with additional Pricing Confirmations.

Participant (Pg 1 of Agreement):	Com Gas (Eversource)	Exhibit A, Att. 1 Pg. 1/Pg. 2 REF:
For Reference: Date Agreement ends: 10/31/2025	Pipeline:	Capacity Assigned:

Start Date	End Date	Basis \$/Dth	NYMEX \$/Dth	Fixed \$/Dth	% of Load	Swing Choice: 0% or 10% Type: Monthly or Daily	Basis Premium/Discount adds \$/Dth

- 1- Qualifying Participants (>10,000 dth/mo.) may confirm commodity pricing in increments of not less than one-third of a month's requirements. Use additional sheets.
- 2- Buyer shall pay the prices shown above for quantities delivered to each Account's Delivery Point, including the amount of gas required by the LDC under its tariff for fixed use and losses, plus costs incurred for transportation on the LDC gas systems, if paid by Seller, plus any applicable adjustments pursuant to the "Contract Price" provision of this Agreement. Refer to Exhibit A for Swing Pricing if selected above. If swing pricing not selected, then Full Plant Requirement is applicable. To the extent this Pricing Confirmation (Exhibit A, Attachment 1), conflicts with any Pricing Confirmation signed prior to the date set forth below for the same Account(s), it supersedes such prior Pricing Confirmation. The parties have caused this Exhibit A to be executed by their duly authorized representatives.
- 3. CARBON OFFSET PRODUCT: By initiating here \_\_\_\_\_ Buyer acknowledges that this Pricing Confirmation includes the purchase and sale of Carbon Offset Credits in an amount set forth as the Product Quantity. The Product Quantity is intended to represent the Carbon Offset to \_\_\_\_\_ % of the Customer's actual quantity ("Product Quantity"), provided however, Seller makes no representation or warranty regarding said percentage of offset. The price of the Product Quantity is included in the Contract Price.

a. Carbon Offset Region:  
 Choose Regional Source of Carbon Offsets:  
 Domestic (United States or Canada)     International (Markets other than United States or Canada)

a. Carbon Offset Technology:  
 Choose Technology of Carbon Offsets:  
 Nature Based (Forestry)     Non-Nature Based (Landfill Methane Avoidance, Coalmine Methane Capture, Energy Efficiency, Transportation, HFC Mitigation, or Carbon Capture & Sequestration)

BUYER: \_\_\_\_\_ NRG Business Marketing LLC

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_



**EXHIBIT B**

**FORM OF AUTHORIZATION LETTER**

**FORM LETTER - AUTHORIZATION FOR RELEASE OF GAS UTILITY DATA  
TO BE SIGNED BY BUYER ON INSTITUTION'S LETTER HEAD**

[Date]

Re: Account Data for Accounts listed in Attachment  
[Attach relevant portion of Attachment 1 to Exhibit A for description of Accounts]

This letter is to serve as authorization to release to \_\_\_\_\_ or PowerOptions, Inc. all information relative to our account(s) listed in the attachment, including but not limited to service, load and usage history, rates, billing data and billing determinants. This request for release is valid for one (1) year from the date of this letter with respect to \_\_\_\_\_ and five (5) years from the date of this letter with respect to PowerOptions, Inc.

Very truly yours,

[Buyer's Signature]

**EXHIBIT C**

**PARENT GUARANTEE**

**NRG ENERGY, INC.****Guaranty**

This Guaranty (this "**Guaranty**") is dated June \_\_\_\_, 2021 and made and entered into between:

1. NRG Energy, Inc., a Delaware corporation ("**Guarantor**"); and
2. PowerOptions, Inc., a Massachusetts non-profit corporation ("**Contract Party**").

**WHEREAS,**

- (A) Contract Party and NRG Business Marketing LLC, a Delaware limited liability company ("**Obligor**") have entered, into one or more transactions for the purchase and sale of natural gas or other energy related services, in each case pursuant to that certain Amended and Restated PowerOptions® Natural Gas Program Agreement, between Contract Party and Obligor, dated as of December 15, 2020, as may be amended from time to time (all such transactions, confirmations and the agreements evidencing same, whether entered into prior to, on or after the date hereof, are referred to herein as "**Transactions**");
- (B) Guarantor will directly or indirectly benefit from the Transactions; and
- (C) As a condition precedent to the Transactions, the Contract Party has required that Guarantor, as the ultimate corporate parent of Obligor, unconditionally guarantee to Contract Party all payment obligations of Obligor to Contract Party under the Transactions.

**NOW THEREFORE**, to induce Contract Party to enter into the Transactions, Guarantor agrees as follows:

**PAYMENT GUARANTEE**

1. Subject to the provisions hereof, Guarantor absolutely, irrevocably and unconditionally guarantees to Contract Party all payment obligations of Obligor due and payable to Contract Party set forth in the Transactions (the "**Obligations**"). Notwithstanding anything in this Guaranty to the contrary, Guarantor's liability under this Guaranty and Contract Party's right of recovery hereunder shall not exceed an aggregate amount equal to Forty-Nine Million United States Dollars (US\$49,000,000.00) (such amount, the "**Maximum Amount**"), which Maximum Amount shall include reasonable out-of-pocket expenses (including reasonable attorneys' fees) to enforce this Guaranty, but only to the extent (i) a demand is made and not honored in a timely manner, (ii) payment under this Guaranty is otherwise due, and (iii) Contract Party prevails in its claim against Guarantor. This Guaranty is a continuing guarantee of payment (and not of collection or performance) and, subject to the other provisions of this Guaranty, effective until all the Obligations have been paid in full.
2. Guarantor WAIVES any right to require as a condition to its obligations hereunder that:
  - (i) presentment or demand be made upon Obligor; and
  - (ii) action be brought against Obligor or any other person or entity except Guarantor,

should Contract Party seek to enforce the obligations of Guarantor. Specifically, without limitation, Guarantor WAIVES any right to require, substantively or procedurally, that:

- (a) a judgment previously be rendered against Obligor or any other person or entity except Guarantor;
  - (b) Obligor or any other person or entity be joined in any action against Guarantor; or
  - (c) an action separate from one against Guarantor be brought against Obligor or any other person or entity.
3. The obligations of Guarantor are several from those of Obligor or any other person or entity, including, without limitation, any other surety for Obligor, and are payment obligations concerning which Guarantor is the primary obligor.
4. The obligations of Guarantor hereunder shall in no way be affected or impaired by reason, and Guarantor WAIVES its right to prior notice, of the happening from time to time of any of the following:
  - (i) extensions (whether or not material) of the time for performance of all or any portion of the Obligations;
  - (ii) the modification or amendment in any manner (whether or not material) of the Transactions or the Obligations;
  - (iii) any failure, delay or lack of diligence on the part of Contract Party, or any other person or entity to enforce, assert or exercise any right, privilege, power or remedy conferred on Contract Party or any other person or entity under the Transactions or at law, or any action on the part of Contract Party or such other person or entity granting indulgence or extension of any kind;
  - (iv) the settlement or compromise of any Obligations; and
  - (v) a change of status, composition, structure or name of Obligor, including, without limitation, by reason of bankruptcy, liquidation, insolvency, merger, dissolution, consolidation or reorganization.
5. This Agreement is a continuing guaranty and shall remain in full force and effect until the latest of (a) the payment in full of the Obligations and all other amounts payable under this Agreement, or (b) the termination or expiration of all Transactions. Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time, either before or after the termination hereof, payment of the Obligations guaranteed pursuant to this Guaranty, or any part thereof, is rescinded or must otherwise be returned by Contract Party upon the insolvency, bankruptcy or reorganization of Obligor, all as though such payment had not been made.

#### RESERVATION OF DEFENSES

6. Without limiting the defenses and rights of Guarantor not expressly waived in this Guaranty, Guarantor expressly reserves unto itself all rights, setoffs, counterclaims and

other defenses of Obligor relating to the Obligations, except those arising out of the bankruptcy, insolvency, dissolution or liquidation of Obligor.

#### NOTICES

7. All notices and communications made pursuant to this Guaranty shall be in writing and delivered personally or mailed recorded delivery postage prepaid, or sent by a reputable delivery service, as follows:

To Guarantor:  
NRG Energy, Inc.  
804 Carnegie Center  
Princeton, NJ 08540  
Attention: Contract Administration

With a mandatory e-mail copy to:  
NRGCollateral@nrg.com and ContractAdmin@nrg.com

To Contract Party:  
PowerOptions, Inc.  
129 South Street, 6<sup>th</sup> Floor  
Boston, MA 02111  
Attention: President and CEO

With a mandatory e-mail copy to: htakle@poweroptions.org

8. Notice given by personal delivery, mail or delivery service shall be effective upon actual receipt. Any Party may change its address to which notice is to be given hereunder by providing notice of the same in accordance with the notice requirements set forth above.

#### MISCELLANEOUS

9. This Guaranty shall in all respects be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, without regard to any conflicts or choice of law rules that would result in the application of a different jurisdiction, and each Party hereby (i) submits to the exclusive jurisdiction of the state and federal courts sitting in the Commonwealth of Massachusetts, (ii) waives any objection which it may have at any time to the laying of venue of any suit, action or proceedings relating to this Guaranty ("**Proceedings**") brought in any such court, (iii) waives any claim that such Proceedings have been brought in an inconvenient forum, and (iv) waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such Party.
10. Notwithstanding anything in this Guaranty to the contrary, in no event shall Guarantor be liable for consequential, exemplary, special, equitable, lost profits, punitive, tort, indirect, incidental or any other similar damages, unless such damages are recoverable under the Transactions.
11. If one or more provisions of this Guaranty shall for any reason or to any extent be determined invalid or unenforceable, all other provisions shall nevertheless remain in full force and effect.

12. Except for increasing the value of the Maximum Amount by a writing signed by Guarantor, no term or provision of this Guaranty shall be amended, modified, altered, waived, supplemented or terminated except in writing signed by Guarantor and Contract Party.
13. Neither Guarantor nor Contract Party may assign or transfer this Guaranty without the prior written consent of Contract Party or Guarantor respectively. Any purported transfer or assignment that is not in accordance with this paragraph shall be void. Subject to the foregoing this Guaranty shall be binding upon and inure to the benefit of and be enforceable by the respective successors, permitted assigns and transferees of Guarantor and Contract Party.
14. This Guaranty embodies the entire agreement and understanding between Guarantor and Contract Party and terminates and supersedes all prior agreements and understandings relating to the subject matter hereof.
15. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.
16. As used herein, the term "**Business Day**" shall mean any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.
17. Guarantor shall make payment in United States dollars and without deductions to Contract Party in immediately available funds of all sums due hereunder within ten (10) Business Days of written demand for the same by Contract Party (which demand shall set forth the basis and the calculation of the amount for which demand is made).
18. Guarantor warrants that this Guaranty is its legally binding obligation enforceable in accordance with its terms (except as the enforceability of this Guaranty may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity), and further warrants that all necessary consents and authorizations for the giving and implementation of this Guaranty have been obtained. Guarantor represents that it is an "eligible contract participant" as defined in Section 1a(18) of the U.S. Commodity Exchange Act, as amended.
19. Until all amounts which may be or become payable under the Transactions have been paid in full, Guarantor shall not by virtue of this Guaranty be subrogated to any rights of Contract Party or claim in competition with Contract Party against Obligor in connection with any matter relating to or arising from the Obligations or this Guaranty, and upon such payment in full, Contract Party shall take, at Guarantor's expense, all such steps as the Guarantor may reasonably request to implement such subrogation.

**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty to be executed as of the day and year first above written.

**NRG ENERGY, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**Natural Gas PRiME™ Program for Hedging NYMEX – No fee for service**

**Our PRIME product provides:**

- Risk tolerance that is established based on your unique energy needs
- A unique buying strategy to lock in your natural gas commodity price
- Timely access to market information and account reports

Take a look at the chart below to see which style best fits your needs:

<b>Your objective</b>	Increased budget certainty: minimum exposure to price volatility Your objective	Reduced market exposure	Greater opportunity to take advantage of market value prices.	Lowest prices possible, even if it means added risk.
<b>Ideal if you want</b>	Your entire load locked into a price before the season starts	A small portion of your load to float in order to capture some market value opportunities	A greater portion of your load to float in order to capture greater market value opportunities	Your entire load to float in order to capitalize on all market value opportunities
<b>Minimum volume locked going into season (hedged)</b>	100%	75%	50%	0%
<b>Maximum volume available to capture in-season value pricing opportunities</b>	0%	50%	75%	100%

A customer who is on the PRIME Program also has access to a standardized PRIME Performance Report that shows them how the PRIME Program purchasing decision has performed against the NYMEX market without hedging. PRIME stands for **P**rice **R**isk **M**anagement of **E**nergy

PRIME™ PURCHASING PROGRAM:

Your "Responsible Trigger Contact(s)" have been identified as the Products Structure Desk [customer@customercompany.com].

Seller will generate a confirmation to be sent to your Responsible Trigger Contact each time the Commodity Charge is fixed ("Trigger Confirmation"). Each such Trigger Confirmation is to be regarded as a part of this Transaction Confirmation and is binding upon receipt by Buyer. Any notices regarding Trigger Confirmations must be sent to [trigger@nrg.com](mailto:trigger@nrg.com).

Changes to the Responsible Trigger Contact must be communicated in writing through your Account Manager.

Buyer acknowledges participation in the Purchasing Program ("Program") by executing this Transaction Confirmation; therefore, the per Dth Commodity Charge will be fixed in accordance with the terms of the Program pursuant to the Risk Profile selected below.

In the event that Buyer exits the Program early, Buyer will be responsible to Seller for all resulting damages incurred by Seller.

Risk Profile (Select One)

Conservative \_\_\_\_\_

"Minimize your exposure to market movements and have all of your requirements fixed prior to the Delivery Period."

Moderate \_\_\_\_\_

"Reduce your exposure to market movements and have the majority of your requirements fixed prior to the Delivery Period."

Aggressive

"Seek the best values through longer exposure to market movements and more aggressive targets."

Ultra \_\_\_\_\_

"Same Value Buy targets as Aggressive with no Time Buys."

The Buyer acknowledges that it is acting for its own account, and it has made its own independent decisions and that Seller is not acting as a fiduciary, financial, investment or commodity trading advisor for it in connection with the negotiation and execution of this Transaction Confirmation, nor will any communication (written or oral) received from the Seller be deemed to be an assurance or guarantee as to any results expected from executing this Transaction Confirmation.

Buyer confirms it has chosen \_\_\_\_\_ as its prime product as indicated by initials Prime Plus / Prime

**EXHIBIT E**

**Natural Gas Managed Product**



**NATURAL GAS MANAGED PRODUCT**

1. Supplier will work with Buyer to develop an overall approach for Buyer's Gas purchases ("Buying Strategy") that is mutually agreed upon by the Parties. The Buying Strategy will work in conjunction with the purchases made by Buyer under its existing Participant Agreement in effect. Below is a general description of the types of Buying Strategy services that Supplier will provide.

2. In order to develop the Buying Strategy, Supplier will:

A. Initially meet with Buyer to determine a Buying Strategy based upon, but not limited to, the following criteria: Buyer's budgeting concerns, assessment of the Buyer's risk tolerance, historical and projected load profile, and price targets.

- a) A position monitoring report, customized to show Buyer's current fixed price position(s);
- b) A transaction detail report that provides details of conversions to a fixed price.
- c) A Price Target Tracking Report
- d) Customized Benchmarking and Ad Hoc Reporting

B. Determine the frequency and types of ongoing communication necessary to meet the needs of the Buyer.

- a) Strategy calls, which may include a discussion of the overall Buying Strategy, any reports received by Buyer, energy price trends, and current news impacting energy markets;
- b) Periodic distribution of market intelligence data and charts that illustrate forward and historical energy price trends; and
- c) Annual on-site gas portfolio strategy visit to provide education and planning sessions customized to the needs of you and your team.

C. Access to updated information, where available, regarding energy markets via Supplier's website including energy newsletters, charts and market updates.

3. Risk Acknowledgement: The Buyer acknowledges that it has made its own independent decisions and that Supplier is not acting as a fiduciary, agent, financial, investment or commodity trading advisor for it in connection with the negotiation and execution of this transaction, nor will any communication (written or oral) received from Supplier be deemed to be an assurance or guarantee as to any results expected from executing this exhibit.

**Buyer:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Supplier: NRG Business Marketing LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT F**

**Natural Gas Recall Option**



NRG Business Marketing LLC  
804 Carnegie Center, Princeton, NJ  
08540 1.844.737.6742 | nrg.com

Marketer Name:  
Date:

**CUSTOMER INFORMATION**

<b>Customer Name:</b> Individual test		<b>Billing Contact:</b>	
<b>Contact Name:</b>		<b>Billing Address:</b>	
<b>Address:</b>		<b>Telephone:</b>	<b>Fax:</b>
<b>Telephone:</b>	<b>Fax:</b>	<b>Email:</b>	

**AMENDMENT FOR GAS RECALL INCENTIVE**

This Amendment to Attachment 1 to Exhibit A of the Participant Agreement is executed between Buyer and Seller and is effective as of {date}. If a conflict arises between the terms of this Amendment and the terms of the Attachment 1 to Exhibit A, the terms of this Amendment will control. For the avoidance of doubt, in the event of any conflict within the Agreement, the order of governance is as follows: (1) this Amendment (2) Attachment 1 to Exhibit A (3) Participant Agreement. All capitalized terms used herein but not defined herein are as defined in the Participant Agreement. Except as set out below, all terms and conditions set out in the Participant Agreement, as amended by the Transaction Confirmation, remain in effect. THIS AMENDMENT WILL NOT BE EFFECTIVE UNTIL SIGNED BY BOTH PARTIES.

**Buyer's Facilities/Accounts**  
(Additional pages may be attached if necessary)

LDC Account Number	Facility Address

**Recall Period**

Begin: \_\_\_\_\_ End: \_\_\_\_\_

**Delivery Point**

Utility: \_\_\_\_\_ Pool Point: \_\_\_\_\_

**Daily Recall Incentive Option**

Buyer hereby elects the total number of days during the Recall Period that it authorizes Seller to recall supply of Gas to the Account(s) in accordance with the Terms and Conditions set forth below (such option, the "Daily Recall Incentive Option") as well as the maximum and minimum duration of each such recall.

Total number of days available for recall \_\_\_\_\_ Initial \_\_\_\_\_ Minimum duration of recall days [must be at least one (1) day (from 10:00am to 10:00am) in duration] \_\_\_\_\_ Initial \_\_\_\_\_  
Maximum duration of recall days \_\_\_\_\_ Initial \_\_\_\_\_ Minimum credit/payment amount per day needed to consider for switching: \$ \_\_\_\_\_ Initial \_\_\_\_\_

For each day of recall during the Recall Period, Seller will pay Buyer the amount set forth by the formula



Recall Period; (v) Buyer is not a party to any contract with respect to the Account(s), including any contract with its LDC and the terms of any LDC tariff, that would prohibit or limit its ability to discontinue use of Gas delivered to the Account(s) in the manner set forth herein or otherwise meet its obligations under this Agreement, and; Buyer is a commercial user of the Gas specified herein that is the subject of a Daily Recall Event and Buyer is entering into a Daily Recall Event solely for purposes related to its business. Buyer will maintain at all times during the Recall Period (a) the means necessary to receive and respond to communications from Seller regarding the Interruption and resumption of Gas delivery, and (b) designated representatives available as Seller's primary and secondary point of contact by telephone and e-mail. Seller hereby represents and warrants that it is a producer, processor, or a merchant handling the Gas specified herein that is the subject of a Daily Recall Event. Each party hereto hereby represents and warrants that it is not a swap dealer or major swap participant and agrees to provide the other party with written notice if its status changes.

**Change in Delivery Point:** Consistent with FERC requirements, Seller shall have the right (but not the obligation), to select or change a Delivery Point to a point where Buyer may receive Gas that is outside the jurisdictional limits of the municipality or other jurisdiction where an Account(s) under this Agreement is located, which shall constitute a Delivery Point at which title, control, possession and risk of loss will pass to Buyer as further provided in the Agreement.

**Satisfaction of Buyer's Firm Gas Obligations:** During a Daily Recall Event, the Daily Recall Contract Quantity for the days during the Recall Period that it authorized Seller to recall supply of Gas to the Account(s) will be subtracted from the original Contract Quantity of Gas for purposes of determining the monthly Gas Settlement Adjustment during that month. Both Parties acknowledge and agree that all Contract Quantities of Gas scheduled herein will be sold for physical delivery to either the Buyer if a Daily Recall Event has not been enacted or another third party purchaser during a Daily Recall Event.

The Parties shall seek to agree at the time a Daily Recall Event is executed whether such transaction is a Trade Option or otherwise exempt from reporting. If the Daily Recall Event is a Trade Option, each Party shall, if required, in accordance with CFTC Regulations, (a) report the transaction in accordance with CFTC Regulations; or (b) if the Parties cannot agree as to whether a transaction is a Trade Option or otherwise exempt from reporting, then each Party shall make its own determination.

Notwithstanding anything to the contrary in the Agreement or in any non-disclosure, confidentiality or similar agreement to the contrary, each Party consents to the disclosure of information only to the extent required by CFTC Regulations and only to the persons or entities contemplated by those CFTC Regulations.

"CFTC" means the U.S. Commodity Futures Trading Commission.

"CFTC Regulations" means the rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations published or issued by the CFTC, in each applicable case as amended, and when used herein may also include specific citations to Titles, Parts or Sections of Title 17 of the Code of Federal Regulations without otherwise limiting the applicability of other rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations.

"Commodity Exchange Act" means the U.S. Commodity Exchange Act, as amended, 7 USC Section 1, et seq.

"Commodity Option" means a "commodity option" within the meaning of CFTC Regulations.

"Trade Option" means a Daily Recall Event between the Parties under the Agreement that meets the conditions contained in CFTC Regulation 32.3(a).

Seller is an eligible contract participant, as defined in section 1a(18) of the Commodity Exchange Act, as further jointly defined or interpreted by the CFTC and the Securities and Exchange Commission.

**Contact information below is needed for recall event**

	First Name	Last Name	E-mail	Work Phone	Cell Phone
Primary Contact					
Additional Contact					
Additional Contact					
Additional Contact					

This Amendment is governed in accordance with the governing law as indicated in the Participant Agreement and with the Participant Agreement and all schedules and exhibits thereto constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all prior oral and written communications with respect thereto. The remaining terms of Attachment 1 to Exhibit A are unchanged.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the respective dates specified below with effect as of the latest date specified in the signatures below.

**PLEASE SIGN AND RETURN THIS AMENDMENT BY FACSIMILE TO ( )**

<b>Buyer:</b>	<b>Individual test</b>	<b>Seller:</b>	<b>NRG Business Marketing LLC</b>
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____
		Proposal ID:	_____
		Internal ID:	_____

**EXHIBIT G**

**Terms of Service  
Applicable to Customers with an Annual Load of 7,000 therms or less (220 CMR 14.05)**

**(a) Pricing Structure**

See Agreement Section 4 (Contract Price), Exhibit A and Attachment 1 to Exhibit A.

**(b) Length and kind of contract**

See Agreement Section 2 (Term), Exhibit A and Attachment 1 to Exhibit A

**(c) Due Date of Bills and Consequences of Late Payment**

See Agreement Section 7 (Billing and Payment; Dropped Accounts), Section 15 (Default and Termination)

**(d) Conditions under which a credit agency is contacted**

- Credit history sought in Section 3(a)
- "Good faith credit concerns" discussed in Section 3(c)

**(e) Deposit Requirements and Interest on Deposits**

See Agreement Section 3(b) (Credit Provisions Applicable to Potential Buyers)

**(f) Limits on Warranty and Damages**

See Agreement Sections 6 (Agency), 10 (Title to Gas, Indemnity and Warranty), 15(b) (Default and Termination, Remedies), 22 (Limitation of Liability)

**(g) Any and all Charges, Fees, and Penalties**

See Agreement Section 4 (Contract Price) including 4(b) Material Change, (4d) Change in Use, Section 7 (Billing and Payment; Dropped Accounts), Section 15 (Default and Termination)

**(h) Information on Consumer rights pertaining to third-party billing, Deferred Payments, and Rescission of Supplier Switch within Three Days of Receipt of Confirmation.**

Buyer's execution of the Agreement and receipt of the Terms of Service triggers a three-day right to rescind the affirmative choice of Supplier, without charge or penalty in accordance with 220 C.M.R. 14.04(4)(d).

**(j) Toll-Free number for Customer Service and Complaints**

**(k) 1.844.737.6742 Low income rate eligibility**

N/A

**(l) Details on the availability and terms of Default Service.**

Please contact your LDC, identified on Page 1 of the Agreement, for details on the availability and terms of Default Service.

**(m) Notification of changes to Items in the Terms of Service.**

Supplier will notify you of changes to any items in the Terms of Service in accordance with the notice provision set forth in the Agreement.

**EXHIBIT H**

**Carbon Offset Agreement**

**Carbon Offset:**

The Product Quantity, as set forth on Attachment 1 to Exhibit A, shall represent a carbon offset credit which is retired by Supplier and measured and delivered in metric tonnes of CO<sub>2</sub> equivalent from projects verified by and registered with one of the following voluntary Carbon Offset Programs:

Verified Carbon Standard (VCS) Program which certifies and tracks the reduction of Green House Gas (GHG) emissions in metric tonnes of carbon dioxide equivalent units called verified carbon units (VCU). For more information go to: <https://verra.org>

American Carbon Registry (ACR) which oversees the registration and verification of carbon offset projects in metric tonnes of carbon dioxide equivalent units known as Emission Reduction Tonnes (ERT). For more information go to: <https://americancarbonregistry.org>

Climate Action Reserve (CAR) which acts as a carbon offset registry for the North American Carbon Market by issuing offset credits in metric tonnes of carbon dioxide equivalent units known as Climate Reserve Tonnes (CRT). For more information go to: [www.climateactionreserve.org](http://www.climateactionreserve.org)

The calculations used to convert the applicable percentage of the actual quantity to the Product Quantity are based on the United States Environmental Protection Agency Greenhouse Gases Equivalencies Calculator – Calculations and References. For more information go to: [www.epa.gov/energy/greenhouse-gases-equivalencies-calculations-and-references](http://www.epa.gov/energy/greenhouse-gases-equivalencies-calculations-and-references). By purchasing this product, Buyer has the right to all associated claims about the environmental benefits it embodies. This product is to be regarded as a real environmental commodity, not as a donation or investment in a future project. The GHG emission reductions Buyer purchased are sourced from verified projects validated and registered in the VCS, ACR or CAR programs.

Supplier shall retire Product Quantity, on Buyer's behalf, at the end of the reporting year in which the Carbon Offsets were purchased.

Buyer will choose the regional source of carbon offsets, either Domestic (United States or Canada) or International (Markets other than United States or Canada), as set forth on Attachment 1 of Exhibit A.

Buyer shall also choose the Carbon Offset Technology, either Nature Based (Forestry) or Non- Nature Based (Landfill Methane Avoidance, Coalmine Methane Capture, Energy Efficiency, Transportation, HFC Mitigation, or Carbon Capture & Sequestration), as set forth on Attachment 1 of Exhibit A.

This Carbon Offset Agreement shall be subject to the Participant Agreement, provided however that title to, possession of and risk of loss to the Carbon Offsets will not pass to Buyer at the Delivery Point.

Supplier represents and warrants to Buyer that: (i) the Carbon Offset represented by the Product Quantity are verified and recorded by the VCS, ACR or CAR voluntary Green House Gas Programs, and (ii) Supplier has not sold the Product Quantity to any other person/entity or used the Carbon Offsets to meet the compliance requirements under any regulatory or voluntary carbon reduction program or standard for any other person/entity."

If any judicial, regulatory or legislative action or change renders performance of the material obligations contained in this Carbon Offset Agreement of illegal, then, following prior notice to Buyer, this Carbon Offset Agreement shall terminate immediately, however the underlying transaction for natural gas supply shall remain in effect.

**EXHIBIT I**

**Standalone Carbon Offset Agreement – Existing Participant**

This Agreement for the purchase and sale of Carbon Offset Credits ("Carbon Offset Agreement") is entered into among Direct Energy Business, LLC, NRG Business Marketing LLC ("Supplier") and [ \_\_\_\_\_ ] ("Buyer" or "Customer") (each a "Party" and together, the "Parties") on \_\_\_\_\_ ("Effective Date"). Reference is also made to that certain Participant Agreement between Supplier and Buyer (the "Participant Agreement").

1. Transactions: For the Delivery Term provided, Buyer agrees to purchase, and Supplier agrees to retire on behalf of Buyer, Carbon Offset Credits meeting the requirements outlined below.

2. Performance: A Carbon Offset Credit represents a credit which is retired by Supplier on behalf of Buyer and measured and delivered in metric tonnes of CO2 equivalent from projects verified by and registered with one of the following voluntary GHG Carbon Offset Programs:

Verified Carbon Standard (VCS) Program which certifies and tracks the reduction of Green House Gas emissions in metric tonnes of carbon dioxide equivalent units called verified carbon units (VCU). For more information, go to: <https://verra.org>

American Carbon Registry (ACR) which oversees the registration and verification of carbon offset projects in metric tonnes of carbon dioxide equivalent units known as Emission Reduction Tonnes (ERT). For more information, go to: <https://americancarbonregistry.org>

Climate Action Reserve (CAR) which acts as a carbon offset registry for the North American Carbon Market by issuing offset credits in metric tonnes of carbon dioxide equivalent units known as Climate Reserve Tonnes (CRT). For more information go to: [www.climateactionreserve.org](http://www.climateactionreserve.org)

By purchasing this product, Buyer has the right to all associated claims about the environmental benefits it embodies. This product is to be regarded as a real environmental commodity, not as a donation or investment in a future project. The GHG emission reductions Buyer purchased are sourced from verified projects validated and registered in the VCS, ACR or CAR programs.

3. Commercial Terms and Purchase Price: Buyer will pay the Purchase Price to Supplier, for all Carbon Offset Credits, as set forth herein:
  - a. The Product Quantity is intended to represent \_\_\_\_\_ metric tonnes of carbon dioxide equivalent units for the time-period from \_\_\_\_\_ to \_\_\_\_\_.
  - b. The price for each metric tonne of carbon dioxide equivalent unit is \$\_\_\_\_\_, for a Total Purchase Price of \$\_\_\_\_\_. \*Other than Taxes, if applicable, there are no additional costs/charges outside of the Total Purchase Price set forth herein, unless a Change in Law occurs which affects the Purchase Price pursuant to Section 6 below.
  - c. Term of Agreement: This Agreement is effective as of the Effective Date set forth above and ends 30 days following the end of the last calendar year for which Buyer has purchased a Carbon Offset Credit. Supplier shall provide Buyer with information sufficient to identify the Carbon Offset Credit(s) purchased by Buyer hereunder during the Delivery Term on an annual basis.
  - d. Carbon Offset Region:  
Choose Regional Source of Carbon Offsets:

Domestic (United States or Canada)  International (Markets other than United States or Canada)

e. Carbon Offset Technology:

Choose Technology of Carbon Offsets:

Nature Based (Forestry)  Non-Nature Based (Landfill Methane Avoidance, Coalmine Methane Capture, Energy Efficiency, Transportation, HFC Mitigation, or Carbon Capture & Sequestration)

4. Taxes: Buyer shall pay any Federal and/or State Taxes associated with the Carbon Offset Credits purchased and sold hereunder.
5. Billing and Payment: Buyer shall be invoiced for the Carbon Offset Credits by one of the following options it will elect below: (a) Buyer shall receive a one-time upfront invoice for the total Carbon Offset Credits purchase provided under this Agreement due and payable within thirty (30) days from the receipt of the invoice; or (b) Buyer shall receive monthly invoices throughout the term of this Agreement. In such events, payments to Supplier for amounts due under this Agreement shall be made by Buyer within thirty (30) days from the date of invoice.

Buyer shall remit payment in full to the address specified on such invoice. If Buyer fails to remit payment in full, interest will be assessed on the late balance at the lower of (a) one-and-one-half (1.5%) percent per month or (b) the highest rate allowed by law. Buyer will be responsible for all costs, fees and expenses (including reasonable attorney's fees) incurred by Supplier in collecting the amount payable. Buyer has decided to receive:

a one-time upfront invoice

a monthly invoice throughout the billing term of this Agreement which shall be in \_\_\_\_\_ monthly payments of \$ \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_.

6. Change in Laws: If Supplier reasonably concludes that a change in any law applicable to this Agreement affects the Purchase Price, the Purchase Price may be adjusted by Supplier upon advance written notice to Buyer. If Supplier determines that any judicial, regulatory or legislative action or change renders performance of the material obligations contained in this Agreement illegal or impossible, this Agreement shall terminate automatically without further liability to either party.
7. Force Majeure: Neither Party will be liable to the other Party for failure to perform its obligations when the failure is due to causes not reasonably within the Party's control, and not caused by the Party's own negligence ("Force Majeure"), but only

for as long as and to the extent that performance is prevented or materially affected by Force Majeure. The Party claiming a Force Majeure event will notify the other Party in writing as soon as practicable and will use due diligence to remove the cause of the Force Majeure and resume performance under this Agreement. Force Majeure cannot be caused by an increase or decrease in Taxes or the cost of Carbon Offsets, the economic hardships of a Party, or the full or partial closure of a Party's facilities. Force Majeure will not excuse Buyer from paying for Carbon Offsets it purchases or receives. Settlement of strikes and/or lockouts is solely at the discretion of the affected Party.

8. Financial Responsibility: Section 3 of the Participant Agreement "Provision of data; credit" is incorporated herein.
9. Events of Default: "Event of Default" means, (i) the failure of either Party to make any payment required by the applicable due date and the failure is not remedied within five (5) days of receipt of written demand for cure; (ii) the failure of Buyer to provide Credit Assurance within five (5) Business Days of Supplier's request; (iii) either Party (or its guarantor) is or becomes Bankrupt, and (iv) the failure of either Party to perform any other obligation not already specifically addressed by (i) – (iii) above, except to the extent such failure is excused by an event of Force Majeure, and the failure is not cured within ten (10) days of receipt of written demand for cure. "Bankrupt" means with respect to any entity, the entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.
10. Remedies: Upon the occurrence and during the continuance of an Event of Default by Buyer, Supplier may: (i) cancel and resell any Carbon Offsets previously held for or delivered to Buyer, without any further obligation to Buyer; (ii) upon written notice at least one (1) day in advance, accelerate any or all amounts owing between the Parties under this Agreement and terminate this Agreement; (iii) set-off any amounts due to or from the defaulting party (or its affiliates) against any amount(s) payable to or by the non-defaulting party (or its affiliates) under any other agreements or arrangements between the Parties and their affiliates (whether or not then due and whether subject to any contingency); (iv) determine a settlement amount for each transaction by calculating the gains, losses and costs (including reasonable attorney's fees and the costs of obtaining, maintaining and liquidating commercially reasonable hedges) incurred as a result of the liquidation, and (v) calculate a Net Settlement Amount by aggregating into one amount all settlement amounts and all other amounts owing between the Parties under this Agreement ("Net Settlement Amount"). Any Net Settlement Amount due from the defaulting Party to the non-defaulting Party will be paid within three (3) days of

receipt of written notice from the non-defaulting Party. To the extent that a settlement amount would be due to the defaulting Party, the settlement amount shall be deemed to be zero. Interest on any unpaid portion of the Net Settlement Amount will accrue daily at the rate provided above. The gain or loss for each liquidated transaction due to an Event of Default may be calculated by any commercially reasonable method chosen by the non-defaulting Party, including by determining the difference between the Purchase Price and the market price of the total quantity remaining to be delivered. Upon the occurrence and during the continuance of an Event of Default by Supplier, Buyer may determine a Net Settlement Amount as set forth in section 10(v).

11. **Waiver/Cumulative Remedies:** No delay or failure by a Party to exercise any right or remedy to which it may become entitled herein will constitute a waiver of that right or remedy. All waivers must be in writing. All remedies will be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, lien or other right to which any Party or any of its affiliates is at any time otherwise entitled (whether by operation of law or in equity, under contract or otherwise).
12. **Representations/Warranties:** Supplier warrants to Buyer that (i) the Carbon Offset Credits represented by the Product Quantity are issued under the VCS, ACR or CAR voluntary Green House Gas Programs, (ii) the Supplier has or will have good title to the Carbon Offset Credits at the time such Carbon Offset Credits are retired, (iii) Supplier has the right to sell the Carbon Offset Credits; (iv) Supplier has not transferred the Carbon Offset Credits to any other person or used the Carbon Offset Credits to meet compliance requirements under any regulatory or voluntary program or standard; and (v) the Carbon Offset Credits will be free from all royalties, liens and encumbrances. ALL OTHER WARRANTIES, EXCEPT AS SET FORTH IN THIS PARAGRAPH, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.
13. **Additional Disclaimer:** Buyer acknowledges that it has performed such due diligence, to the extent that Buyer has deemed necessary, to permit it to fully evaluate the merits of the purchase and retirement of the Carbon Offset Credits hereunder. Buyer is satisfied as to all inquiries it has made concerning the purchase and retirement of the Carbon Offset Credits by Supplier on behalf of Buyer. Supplier does not warrant that the Carbon Offset Credits sold herein will meet any specific governmental or legislative requirements or obligations in relation to Buyer's reduction of greenhouse gas emissions. Supplier does not warrant that the Carbon Offset Credits sold herein will comply with or meet eligibility criteria of any statutory, voluntary, industry, non-profit or corporate undertaking, standard, program or commitment, except as expressly stated herein.
14. **Limitation of Liability:** Section 22 "Limitation of Liability" of the

Participant Agreement is incorporated herein by reference.

- 15. **Governing Law; Venue.** Section 14 "Governing Law; Venue" of the Participant Agreement is incorporated herein by reference.
- 16. **Assignment.** Section 20 "Assignment" of the Participant Agreement is incorporated herein by reference.
- 17. **Waiver and Amendment.** Section 24 "Waiver and Amendment" of the Participant Agreement is incorporated herein by reference.
- 18. **Notices:** Any notice or waiver shall be provided in writing to the addresses below. Notice sent by electronic means or fax shall be deemed to have been received by the close of the Business Day on which it was transmitted, or such earlier time as is confirmed by the receiving Party. Notice delivered by overnight courier shall be deemed to have been received on the Business Day after it was sent, or such earlier time as is confirmed by the receiving Party. Notice delivered by first class mail (postage prepaid) shall be deemed to have been received at the end of the third Business Day after the date of mailing.

<b>Buyer:</b>	<b>Direct Energy Business, LLC NRG Business Marketing LLC</b>
<b>Attention:</b>	<b>Attention:</b>
<b>Address:</b>	<b>Address:</b>
<b>Telephone:</b>	<b>Telephone</b>
<b>Facsimile:</b>	<b>Facsimile:</b>

**EXHIBIT J**

**Natural Gas Curtailment Form**



The Self-Curtailment Contract Quantity for each day of Self-Curtailment will be determined by dividing the Monthly Contract Quantity on Attachment 1 to Exhibit A by the number of calendar days in the month, unless otherwise noted.

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### Daily Self-Curtailment Terms and Conditions

**Required Curtailment Notice:** Buyer will notify Seller in advance, by email to [NewEnglandNatGasSchedulersDL@nrg.com](mailto:NewEnglandNatGasSchedulersDL@nrg.com), of its desire to self-curtail ("Curtailment Notice"). The Curtailment Notice will identify the Gas Day(s) and affected Facilities/Accounts at which Buyer desires to curtail its natural gas usage (the "Daily Self-Curtailment Event"). The Curtailment Notice must be received by Seller at least twenty-two (22) hours prior to the first hour of the Gas Day of the Self-Curtailment Event (i.e. 12:00 P.M. the day before the Self-Curtailment begins). To qualify for the Self-Curtailment Credit, Buyer must receive Seller's written response indicating Seller's agreement to the Daily Self-Curtailment Event ("Seller Sign-Off") prior to initiating its Daily Self-Curtailment Event.

**Self-Curtailment Credit:** For each day that the parties have agreed Buyer may self-curtail its natural gas supply during the Self-Curtailment Period, Seller will pay Buyer the amount set forth by the formula below for Gas not used that day:  $\{(Market\ Price - Contract\ Price) \times Customer\ Sharing\ percentage\} \times Daily\ Contract\ Quantity$  (the "Self-Curtailment Credit") where Market Price is defined as the average of the gas daily daily midpoint and the gas daily daily absolute high for the \_\_\_\_\_ index or equivalent trade price.

Seller shall resume supply of Gas to the Account(s), upon at least twenty-two (22) hours' notice from Buyer to Seller.

Buyer agrees to the extent permissible by applicable law to (a) indemnify, defend and hold harmless Seller from all costs associated with settling the transaction and from expenses arising from Buyer's usage of Gas during the Daily Self-Curtailment Event. Any interruption by the utility during the coordination of a Self-Curtailment Event, or during the Self-Curtailment Event itself, will negate the Self-Curtailment agreement during the 24hr period in which the utility interruption takes place.

During a "Daily Self-Curtailment Event", Buyer shall switch to its alternate fuel capabilities and maintain its natural gas usage at zero DTH at Facilities/Accounts listed on this Amendment for the full duration of each Gas Day(s) stated in the Curtailment Notice.

**Alternate Fuel Purchase:** Buyer shall be solely responsible for procuring and paying the purchase price of all alternate fuel delivered to Buyer during the Self-Curtailment Period or during the Daily Self-Curtailment Event. Seller shall have no liability for Buyer's failure to procure alternate fuel for the Daily Self-Curtailment Period or during a Daily Self-Curtailment Event and agrees to the extent permissible by applicable law to indemnify, defend and hold harmless Seller from all costs or expenses associated with or arising from Buyer's failure to procure alternate fuel to be utilized in place of Gas during the Daily Self-Curtailment Event.

**Daily Self-Curtailment Representations, Warranties and Covenants:**

Buyer will self-curtail at its own risk and understands that Seller will rely on Buyer's intent to curtail once it has received the Curtailment Notice. Buyer acknowledges that it has made its own independent decisions and that Seller is not acting as a fiduciary, agent, financial, investment or commodity trading advisor for it regarding the negotiation and execution of this Amendment, nor will any communication (written or oral) received from Seller be deemed to be an assurance or guarantee as to any results expected from executing this Amendment.

Buyer hereby represents and warrants as follows: (i) Buyer is able to completely discontinue use of Gas delivered to the Account(s) by LDC; (ii) Buyer's consumption of alternate fuel as specified herein will not violate any state, federal or local laws, orders or regulations, including any permitting or registration requirements; (iii) Buyer will assure that sufficient contact information for the primary and secondary persons who will receive directives is provided to Seller and is at all times current; (iv) Buyer will assure that it has sufficient alternate fuel available at the commencement of a Daily Self-Curtailment Period to operate for the entire Daily Self-Curtailment Period; (v) Buyer is not a party to any contract with respect to the Account(s), including any contract with its LDC and the terms of any LDC tariff, that would prohibit or limit its ability to discontinue use of Gas delivered to the Account(s) in the manner set forth herein or otherwise meet its obligations under this Agreement, and; Buyer is a commercial user of the Gas specified herein that is the subject of a Daily Self-Curtailment Event and Buyer is entering into a Daily Self-Curtailment Event solely for purposes related to its business. Buyer will maintain at all times during the Self-Curtailment Period (a) the means necessary to receive and respond to communications from Seller regarding the Interruption and resumption of Gas delivery, and (b) designated representatives available as Seller's primary and secondary point of contact by telephone and e-mail. Seller hereby represents and warrants that it is a producer, processor, or a merchant handling the Gas specified herein that is the subject of a Daily Self-Curtailment Event. Each party hereto hereby represents and warrants that it is not a swap dealer or major swap participant and agrees to provide the other party with written notice if its status changes.

**Change in Delivery Point:** Consistent with FERC requirements, Seller shall have the right (but not the obligation), to select or change a Delivery Point to a point where Buyer may receive Gas that is outside the jurisdictional limits of the municipality or other jurisdiction where an Account(s) under this Agreement is located, which shall constitute a Delivery Point at which title, control, possession and risk of loss will pass to Buyer as further provided in the Agreement.

**Satisfaction of Buyer's Firm Gas Obligations:** During a Daily Self-Curtailment Event, the Daily Self-Curtailment Contract Quantity for the days during the Self-Curtailment Period will be subtracted from the original Contract Quantity of Gas for purposes of determining the monthly Gas Settlement Adjustment during that month. Both Parties acknowledge and agree that all Contract Quantities of Gas scheduled herein will be sold for physical delivery to either the Buyer if a Daily Self-Curtailment Event has not been enacted or another third party purchaser during a Daily Self-Curtailment Event.

The Parties shall seek to agree at the time a Daily Self-Curtailment Event is executed whether such transaction is a Trade Option or otherwise exempt from reporting. If the Daily Self-Curtailment Event is a Trade Option, each Party shall, if required, in accordance with CFTC Regulations, (a) report the transaction in accordance with CFTC Regulations; or (b) if the Parties cannot agree as to whether a transaction is a Trade Option or otherwise exempt from reporting, then each Party shall make its own determination.

Notwithstanding anything to the contrary in the Agreement or in any non-disclosure, confidentiality or similar agreement to the contrary, each Party consents to the disclosure of information only to the extent required by CFTC Regulations and only to the persons or entities contemplated by those CFTC Regulations.

"CFTC" means the U.S. Commodity Futures Trading Commission.

"CFTC Regulations" means the rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations published or issued by the CFTC, in each applicable case as amended, and when used herein may also include specific citations to Titles, Parts or Sections of Title 17 of the Code of Federal Regulations without otherwise limiting the applicability of other rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations.

"Commodity Exchange Act" means the U.S. Commodity Exchange Act, as amended, 7 USC Section 1, et seq.

"Commodity Option" means a "commodity option" within the meaning of CFTC Regulations.

"Trade Option" means a Daily Self-Curtailment Event between the Parties under the Agreement that meets the conditions contained in CFTC Regulation 32.3(a).

Seller is an eligible contract participant, as defined in section 1a(18) of the Commodity Exchange Act, as further jointly defined or interpreted by the CFTC and the Securities and Exchange Commission.

**Buyer's Contact information below is needed for Self-Curtailment event**

	First Name	Last Name	E-mail	Work Phone	Cell Phone
Primary Contact					
Additional Contact					
Additional Contact					
Additional Contact					

This Amendment is governed in accordance with the governing law as indicated in the Participant Agreement and with the Participant Agreement and all schedules and exhibits thereto constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all prior oral and written communications with respect thereto. The remaining terms of Attachment 1 to Exhibit A are unchanged.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the respective dates specified below with effect as of the latest date specified in the signatures below.

---

PLEASE SIGN AND RETURN THIS AMENDMENT BY FACSIMILE TO (\_\_\_\_)\_\_\_\_\_.

---

<b>Buyer:</b>	<b>Individual test</b>	<b>Seller:</b>	<b>NRG Business Marketing LLC</b>
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____
		Proposal	_____
		ID:	_____
		Internal ID:	_____



10.4843	22	109 BUCKLIN ST,RI - 02903
9.2214	22	215 W EXCHANGE ST,RI - 02900
8.3042	22	1000 ELMWOOD AVE,RI - 02900
7.9417	22	270 ROCHAMBEAU AVE,RI - 02
21.955	22	1 FLORAL DR,RI - 02903
4.0576	21	1001 ELMWOOD AVEUNE UNIT
31.0844	22	20 ERNEST STREET,RI - 02903
47.5683	33	Exchange Pl,RI - 02903
10.9739	22	426 Admiral St,RI - 02903
7.5159	22	1000 Elmwood Ave,RI - 02903
6.3862	22	151 North Main St,RI - 02903
6.8005	22	776 Allens Ave,RI - 02903
14.7739	22	101 Bucklin St,RI - 02907
8.684	22	1000 Elmwood Ave,RI - 02907
11.2669	22	10 Branch Ave,RI - 02907
21.6891	22	200 Chad Brown St,RI - 02907