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## **SUPPLEMENTAL AGREEMENT TO PROVIDE CONSOLIDATED BILLING SERVICE FOR COMPETITIVE ENERGY SUPPLIER**

This agreement is for Consolidated Billing Services (the “Billing Agreement”) is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between, New Hampshire Electric Cooperative, Inc. (“Cooperative”), a New Hampshire Corporation, with its principal place of business in Plymouth, New Hampshire, and \_\_\_\_\_ is herein referred to as “Supplier”, with its principal place of business in \_\_\_\_\_.

### **I. Basic Understanding**

This billing agreement is a supplement to the **COMPETITIVE ENERGY SUPPLIER SERVICE AGREEMENT** signed by these same parties. This Agreement is to provide additional terms and conditions as understood between the parties such that the Cooperative will provide the service of consolidated billing for the Supplier.

### **II. Billing Service**

In accordance with providing this Consolidated Billing Service, the Cooperative agrees to issue a single bill monthly for all electric service components. The Cooperative will utilize the prices and meter usage data collected by the Cooperative to calculate the Energy Service portion of the bill for the Supplier.

The Cooperative shall not be required to include messages or inserts containing Supplier specific information except as otherwise required by the NHPUC.

The Supplier acknowledges that the Cooperative will not include the Supplier’s pre-existing balances on Consolidated Billing for newly enrolled Members.

The Supplier acknowledges that the Cooperative may, at some time, offer a Summary Billing option, which allows qualified Members with multiple electric service accounts to consolidate multiple individual billings

on a single bill format.

The Supplier acknowledges any remaining outstanding Member balances for Energy Service will be identified on the Member's bill following the time when Supplier is no longer the Member's current Energy Supplier as specified by the EDI Standards.

On a consolidated bill, the NHPUC requires information be provided to the NHEC member for contacting the competitive supplier in the event of questions pertaining to the power supply billing. The Supplier is also required to provide the interest rate to be changed in the event a late payment occurs. The Supplier will provide the required information in the section labeled "G. Information for Consolidated Billing Service" in the Competitive Energy Supplier Service Agreement, Appendix A.

### **III. Seller's Customer Authorization Representations and Warranties**

Supplier represents and warrants that for each and every residential and small commercial customer account subject to consolidating billing Supplier has obtained the customer's express consent, by any means permitted by applicable Commission rules, to authorize the Cooperative to disclose to Seller on a periodic basis the status of the customer's account with the Cooperative as either subject to (1) a budget billing plan with the Cooperative; (2) a payment plan with the Cooperative; or (3) neither a budget billing plan nor a payment plan with the Cooperative. Supplier further represents and warrants that it will provide documentation of any authorization required herein, at the request of the Cooperative.

### **IV. Rates and Services**

The Supplier shall furnish to the Cooperative a complete schedule of its current and relevant rates and rate pricing options for Energy Service. Any subsequent change in the Supplier's existing rate structures or rate pricing options for Energy Service shall be transmitted to the Cooperative as they occur. These notifications will include the old and new rates, old and new pricing options, and effective date for billing each rate. The Supplier shall transmit a sample bill calculation of a Member's bill with 500 kW or other Member sample if it better fits the rate structure for each rate change. For Member inquiries pertaining to energy service, the Supplier shall transmit their current toll free telephone number and changes as they occur.

These transmissions shall be in an electronic format acceptable to the Cooperative, and will be provided by the Supplier to the Cooperative as described on the "NH Electric Cooperative Consolidated Billing – Supplier Rate Sheet" in the section labeled "Consolidated Billing – Establishing Rates or Changing Rate Factors". . Supplier rates and pricing options must conform to the rate structure in use by the Cooperative for each specific rate class and be supported by meters in place.

### **V. Processing of Payments**

For Members under Consolidated Billing which may have chosen Budget Billing, or may have chosen Summary Billing, if available, or may have entered into a Payment Arrangement; the Supplier hereby authorizes the Cooperative to process payments and apply monies in accordance with this Agreement.

If a Member pays the Cooperative less than the full amount billed, the Cooperative will follow a payment hierarchy in the accounting for monies received.

The following payment priorities will apply to all monies received:

1. Outstanding deposits
2. Current payment arrangements
3. Budget billing
4. Cooperative and Supplier aged accounts receivables, with priority for Cooperative aged receivables
5. Cooperative and Supplier current charges, with a priority for Cooperative current charges (this will include returned check charges)
6. Any miscellaneous non-electric service product or services.

Before the close of a Business day, the Cooperative shall notify the Supplier of any payments posted on the previous Business day.

The Cooperative will transfer payments to the Supplier by way of Automated Clearing House (ACH) weekly and provide payment transaction reports weekly. The ACH payment will follow the normal accounts payable payment schedule established by the Cooperative. Typical Cooperative scheduling, for all payments received through the last business day of a week would be paid through ACH to the Supplier by the end of the seventh business day.

#### VI. Budget Billing or Other Payment Arrangements

The Cooperative agrees to provide upon request a sync report to Supplier. The frequency will be one report per month.

As a Competitive Electric Power Supplier offering consolidated billing to your customers, Supplier must obtain the express authorization of residential and small commercial customers, which allows the Cooperative to disclose sync report information to Supplier.

When it has received a successful EDI enrollment from Supplier, the Cooperative will recognize the completion of the EDI enrollment process as indicating Supplier has obtained all required authorizations from the Cooperative's members. . Following a successful EDI enrolment, if a member is enrolled in budget billing or has an existing payment arrangement, this information will be communicated to Supplier via a monthly sync report, on the next scheduled date.

Supplier agrees that any failure to obtain member consent, or to timely provide proof of such consent upon request, shall constitute a material breach of this Consolidated Billing Agreement and further agrees that it shall indemnify the Cooperative, its employees, and its agents, for any claims or damages arising from such breach, including all reasonable attorney's fees and costs incurred in association with responding to such breach.

Within the boundaries established in this Section V, of this agreement:

1. Utilizing monthly sync reporting, the Cooperative will provide enrollment information for members when they enroll in Budget Billing.
2. For those members that enter into a payment arrangement with the Cooperative, information pertaining to their new payment status will be provided utilizing monthly sync reporting.

## **VII. Fees**

The Cooperative will charge the Supplier fees as set forth in its NH Tariff.

Monthly an invoice will be prepared by the Cooperative, indicating the number of bills produced for the Supplier and the total cost. The invoice will be emailed to the Supplier on the first Thursday following the first Monday in the month.

The total charges shown on the monthly invoice will be deducted from the ACH payment that includes at minimum one day of the prior month.

The Cooperative shall have the right to subtract fees that the Supplier owes to the Cooperative, and that are sixty (60) days or more past due, from amounts the Cooperative collects on behalf of the Supplier. Amounts subject to a good faith dispute will not be subject to deduction.

## **VIII. Nondisclosure**

A requirement of this contractual agreement is that the Supplier must have properly executed the separate "Confidentiality and Non-disclosure Agreement", if not properly executed, this agreement even if properly executed will be null and void.

## **IX. Termination**

Notwithstanding anything to the contrary elsewhere in this Agreement, any party, by written notice to the other party ("Breaching Party"), may terminate this Agreement in whole or in part with respect to such Breaching Party or suspend further performance without terminating this Agreement upon the occurrence of any of the following: (a) the Breaching Party terminates or suspends doing business; (b) the Breaching Party becomes subject to any bankruptcy or insolvency proceeding under federal or state law (unless removed or

dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to direct control of a transferee, receiver or similar authority, or makes an assignment for the benefit of creditors; or (c) The Breaching Party commits a material breach of any of its obligations under this Agreement and has not cured such breach within thirty (30) days after receipt of a written notice from the other party specifying the nature of such.

No delay by either party in enforcing any of its rights hereunder shall be deemed a waiver of such rights, nor shall a waiver of one default be deemed a waiver of any other or subsequent default.

The enumeration of the foregoing remedies shall not be deemed a waiver of any other remedies to which either party is legally entitled.

#### **X. Force Majeure**

To the maximum extent permitted under law, NHEC shall not be liable to Competitive Supplier for any direct, special, indirect, punitive, exemplary or consequential damages whatsoever under any theory of law that is now or may in the future be in effect, including without limitation tort, product liability, strict liability, or negligence, caused by interruption, abnormal voltage, discontinuance or reversal of energy delivered, circumstances beyond NHEC's immediate control, including but not limited to civil disturbance, sabotage, war, insurrection, acts of God, nature, or the public enemy, accidents, labor difficulties, actions of transmission service provider(s), Competitive Supplier(s), federal, state, or municipal authorities, the failure to receive electricity from any Competitive Suppliers, implementation of any emergency load reduction program, or the inability for any other reason to maintain uninterrupted and continuous deliveries.

In the event of a force majeure, both parties shall take all reasonable steps to comply with this Agreement.

#### **XI. Liability and Indemnification**

Supplier shall indemnify, defend, and hold harmless the Cooperative, its affiliates, and the directors, officers, employees, and agents of each of them (collectively, "Affiliates"), from and against any and all damages, costs (including attorneys' fees), fines, penalties, and liabilities, in tort, contract, or otherwise (collectively, "Liabilities"), resulting from claims of third parties arising, or claimed to have arisen, from the acts or omissions of the Cooperative in connection with the non-negligent performance of its obligations under this Agreement; and the Supplier shall waive recourse against the Cooperative and its Affiliates for or arising from the non-negligent performance by the Cooperative in connection with the performance of its obligations under this Agreement.

The parties expressly acknowledge and agree that the dispute resolution provision in section X of this Agreement shall apply to any and all disputes arising under this Agreement, including without limitation, those disputes that arise as a result of either of the parties being named as a defendant in the primary action or being named as a third-party defendant by a defendant in the primary action.

Notwithstanding anything in this Agreement to the contrary, in no event shall the Cooperative be liable to the Supplier for indirect, consequential, punitive, special, or exemplary damages under any theory of law that is now or may in the future be in effect, including without limitation: contract, tort, strict liability, or negligence.

The provisions of this Section IX, shall survive the termination of this Agreement.

## **XII. Dispute Resolution**

Disputes hereunder shall be reduced to writing and referred to the parties' authorized representatives for resolution. The parties' authorized representatives shall meet and make all reasonable efforts to resolve the dispute. Pending resolution, the parties shall continue to fulfill their obligations under this Agreement in good faith, unless this Agreement has been suspended or terminated as provided in Section XII. If the parties fail to resolve the dispute within thirty (30) days, they may mutually agree to pursue mediation or arbitration to resolve such issues. The parties agree that the place of mediation or arbitration shall be Concord, New Hampshire.

Disputes between Supplier and its customers shall be subject to the Dispute Resolution Procedures of the Interim Procedures. Any disputes relating to compliance with this Agreement or the regulations of the Commission may be referred by the Cooperative, the Supplier, or the Member to the NHPUC and such disputes shall be subject to the regulatory oversight of the NHPUC.

## **XIII. Notice**

Except as otherwise provided in this Agreement, all notices, correspondence and written communications required to be given by either Party to the other Party hereunder shall be addressed as described in Appendix A, Section F, of the **COMPETITIVE ENERGY SUPPLIER SERVICE AGREEMENT**. The parties agree that such written notice, upon confirmation of receipt, shall constitute an acceptable writing.

## **XIV. Governing Law**

This Agreement is governed by the laws of the State of New Hampshire without regard to the conflict of laws in effect therein.

## **XV. Enforceability**

In the event that any portion or part of this Agreement is deemed invalid, against public policy, void or otherwise unenforceable by a court of law, the validity and enforceability of the remaining portions thereof shall otherwise be fully enforceable.

## **XVI. Assignment and Delegation**

Either party to this Agreement may assign any of its rights or obligations under this Agreement; provided

however, that no assignment by the Supplier shall take effect until the assignee has met the requirements of Section IV of this Agreement. No assignment of this Agreement shall relieve the assigning party of any of its obligations under this Agreement until such obligations have been assumed by the assignee.

In addition, either party may subcontract its duties under this Agreement to a subcontractor provided that the subcontracting party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, and shall serve as the point of contact between its subcontractor and the other party, and the subcontractor shall meet the requirements of this Agreement and any applicable laws, rules, and regulations. The assigning or subcontracting party shall provide the other party with thirty (30) days' prior written notice of any such subcontracting or assignment, which notice shall include such information about the subcontractor as the other party shall reasonably require.

#### **XVII. Disclaimer of warranty**

All services are provided "as-is". No warranty of any kind, either expressed or implied, shall be provided. The Cooperative disclaims all warranties of merchantability and fitness for a particular purpose, and any warranties arising from the course of trade or dealing.

#### **XVIII. Representations**

Both the NHEC and the Supplier represent that it is and shall exercise all reasonable care, diligence and good faith to remain in compliance with all applicable laws, tariffs, and regulations, including all NHPUC and ISO-New England requirements during the term of this Agreement.

Each person executing this Agreement for the respective parties represents and warrants that he or she has authority to bind that party.

Each party represents that: (a) it has the full power and authority to execute, deliver, and perform this Agreement; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate or other action by such party; and (c) this Agreement constitutes that party's legal, valid and binding obligation, enforceable against such party in accordance with its terms.

Each party shall exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement, and carry out its duties in accordance with applicable recognized professional standards.

#### **XIV. Miscellaneous**

This Agreement is the entire agreement between the parties and supersedes all other agreements, communications, and representations. This Agreement may be amended by written agreement of the parties. Paragraph headings are for convenience only and are not to be construed as part of this Agreement. This

Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same document.

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**For Supplier:**

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Signed - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ -

Date

Printed Name

Title - \_\_\_\_\_ -

State of - \_\_\_\_\_ -, County of: - \_\_\_\_\_ -

Before me personally appeared: \_\_\_\_\_ -

Who on this: \_\_\_\_\_ - day of \_\_\_\_\_ - year \_\_\_\_\_ -

Acknowledge the foregoing to be his/her/their voluntary act and deed:

\_\_\_\_\_ -

Justice of the Peace/Notary Public

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**For NH Electric Cooperative:**

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Signed - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ -

Date

Printed Name

Title - \_\_\_\_\_ -

State of - \_\_\_\_\_ -, County of: - \_\_\_\_\_ -

Before me personally appeared: \_\_\_\_\_ -

Who on this: \_\_\_\_\_ - day of \_\_\_\_\_ - year \_\_\_\_\_ -

Acknowledge the foregoing to be his/her/their voluntary act and deed:

\_\_\_\_\_ -

Justice of the Peace/Notary Public