

Alternative Provisions to Standard Offer Contract

1.2 The parties agree that, notwithstanding any provision of this Agreement, the Precepts relating to the subject matter of this Agreement shall control. Accordingly, (a) in the event of any conflict between a term of this Agreement and any Precept, or (b) in the event that any aspect of the parties' transactions relative to the subject matter of this Agreement is not addressed by this Agreement, but is addressed in a Precept, then the applicable Precept shall govern. In the event that a Precept shall change and as a result any provision of this Agreement shall be in conflict with the Precept, the Precept, as changed, shall govern. Upon any change in a Precept ~~which renders a provision of this Agreement inconsistent with the Precept, either party may propose that the MPUC approve a conforming amendment to the Standard Form Service Agreement. Upon acceptance by the MPUC of any proposed change to the Standard Form Service Agreement, this Agreement shall be deemed to have been amended accordingly that affects a right or obligation of a Party under this Agreement, the Parties agree to negotiate in good faith in an attempt to amend this Agreement to incorporate such changes as they deem necessary to reflect the change in the Precept. The intent of the Parties is that any such amendment reflects, as closely as possible, the intent and substance of the Agreement as was in effect prior to such change. If the Parties are unable to reach agreement on such amendment, either Party may propose that the MPUC approve a conforming amendment. The parties recognize that all amendments to this Agreement must be approved by the MPUC.~~

5.4 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.~~

6.1 Revisions to Exhibit B shall be submitted to the T&D Business Contact and shall become effective five (5) business days after the revised Exhibit B has been received and ~~by the T&D~~ has verified or confirmed that the information is accurate and complete. The T&D shall act to verify or confirm the information as promptly as possible.

7.2 In the event ~~of the MPUC determines that there is a~~ default by the Provider to provide standard offer service, the T&D may withhold and dispose of funds otherwise payable to the Provider to cover the costs of replacement service, to the degree that it is authorized to do so under any Precept. ~~Costs allocated to the defaulting Provider shall be reviewed by the MPUC in an appropriate proceeding.~~

7.4 The T&D Companies shall operate and maintain the T&D System in accordance with applicable Precepts and in a manner which does not discriminate against deliveries of Energy by the Provider. The T&D shall, during the Term, to the extent necessary for purposes of implementing this Agreement, (i) continue to be a member in good standing with NEPOOL (or successor entity) and entitled to have its load requirements satisfied with ISO-NE resources, and (ii) maintain a settlement account

established in accordance with the NEPOOL Rules which is sufficient to implement this Agreement.

[The second sentence of this provision may not be included in the contract with Maine Public Service Company]

8.2 Standard Offer rates must conform to the Precepts and be supported by meters in place. The Provider shall submit its ~~schedule of rates~~ accepted bid prices (the "Provider's Rates") based on ~~the results of the~~ MPUC's Standard Offer contract award provider designation. In the event that the MPUC ~~awards designates~~ multiple Standard Offer ~~contracts providers~~ for any given customer class, such that more than one Standard Offer provider will be sharing responsibility for serving a customer class, the Provider shall, with respect to that class, submit (a) the blended rates as determined by the MPUC to be charged to Customers in that class, ~~(as approved by the MPUC)~~ and (b) the Provider's Rates, and (c) the Provider's percentage share of load responsibility for that class (the "Provider's Share"), as determined by the MPUC. The rates to be submitted by the Provider shall be in writing and/or in electronic format, at the option of the T&D. Within the time frame established by the applicable Precept, or in the absence of an applicable Precept, then within thirty (30) days of submission of the rates for testing, the T&D shall complete testing of the rates and provide the test results to the Provider. The Provider shall be responsible for certifying to the T&D its written acceptance of the test results. No rate shall be used in Consolidated Utility Billing until such time as the T&D has completed its testing and the Provider has certified the results of the testing as satisfactory in accordance with this Section. The rates shall be available for use in Consolidated Utility Billing no more than five (5) business days after Provider certification of acceptance.

8.5 The T&D shall determine the Provider's payment based on (a) usage (as determined for T&D billing purposes) by the customer class served by the Provider, multiplied by (b) the Provider's Share, multiplied by (c) the Provider's Rate, minus (d) the applicable allocation for uncollectible revenues set forth in Exhibit A. The T&D shall issue payment to the Provider's financial institution designated in Exhibit B via electronic funds transfer within the time frame specified by the applicable Precept, but in the absence of an applicable Precept, then within twenty-six (26) calendar days following the date of billing. In the event that the scheduled transfer date falls on a weekend or holiday, the transfer will be completed on the next business day. Simultaneously therewith, the T&D shall provide the Provider with the supporting calculation made by the T&D to determine the Provider's payment. In the event an erroneous amount is transferred, a transaction to correct the error will be processed on the next available transfer transaction. If the correction amount is greater than \$50,000, the funds will be electronically transferred to the appropriate party the same business day, if feasible. In no event shall the period to correct an error greater than \$50,000 exceed one business day. If the Provider questions the payment, the T&D must provide the Provider ~~with all~~ may request the T&D documentation supporting the T&D's calculation of the questioned payment, as reasonably requested by the Provider. Amounts due and owing but not paid to Provider within the time periods prescribed by this Section shall bear interest from the due date to the date of payment at the interest rate as

defined in Article 13.1 of this Agreement.

13.1 The T&D will charge applicable fees to the Provider as set forth in Exhibit A and in the Terms and Conditions as approved by the MPUC. The fees in effect prior to the bid process will not be changed during the first year of this agreement. Thereafter, the Terms and Conditions will be subject to periodic review and adjustment upon approval by the MPUC. Bills for services provided by T&D under the terms of this Agreement shall be rendered to Provider and shall be due upon receipt of said bill, unless otherwise specified in Exhibit A. Failure of Provider to pay within the T&D's grace period specified in Exhibit A shall entitle the T&D to charge interest on any unpaid balance calculated equal to the prime rate for corporate loans as published by The Wall Street Journal plus 200 basis points at the rate established by the Commission pursuant to Chapter 870 of its Rules, or any successor Precept. The T&D may set off unpaid amounts against payments otherwise payable to the Provider hereunder. Amounts subject to a good faith dispute will not be subject to off-set.

14.1 Neither party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, ~~including affiliates of such party,~~ without the express prior written consent of the other party, except that disclosures to Provider's employees, officers, directors, advisors and agents and to the employees, officers, directors, advisors and agents of Provider's affiliates are expressly permitted if deemed necessary by the Provider. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the parties, Customers of either or both parties, Providers for either party, personnel of either party; any trade secrets; and other information of a similar nature; whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either party prior to obtaining the same from the other party, information in the public domain, or information obtained by a party from a third party who did not, directly or indirectly, receive the same from the other party to this Agreement or from a party who was under an obligation of confidentiality to the other party to this Agreement, or information developed by either party independent of any Confidential Information. The receiving party shall use the higher of the standard of care that the receiving party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving party shall, upon termination of this Agreement or at any time upon the request of the disclosing party, promptly return or destroy all Confidential Information of the disclosing party then in its possession.

15. Termination: BreachEvent of Default

15.1 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 or the Terms and Conditions and has not cured such breach within fifteen (15) days after receipt of a written notice from the other party specifying the nature of such breach; (d) any representation or warranty made by the Breaching Party hereunder shall be false or misleading in any material respect at any time during the Term; (e) the Breaching Party shall fail to make when due any payment required by this Agreement if such failure is not remedied within ten (10) business days after written notice of such failure is given by the other party.

15.2. If an Event of Default has occurred and is continuing, the Non-Breaching Party may (i) establish a date (which date shall be between one and twenty business days after the Non-Breaching Party delivers notice) (the "Early Termination Date") on which it shall terminate this Agreement and (ii) withhold any payments or other performance due under this Agreement.

15.32 The enumeration of the foregoing remedies shall not be deemed a waiver of any other remedies to which either party is legally entitled. ~~Notwithstanding the availability of other remedies in law or equity, either party shall be entitled to specific performance to remedy a breach of this Agreement by the other party.~~

15.4 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED,

NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

16. Force Majeure

16.1 Neither party shall be considered in default under this Agreement or responsible in tort, strict liability, contract or other legal theory to the other party for damages of any description for any interruption or failure of service or deficiency in the quality or quantity of service, or any other failure to perform if such failure is not caused by the affected party's fault or negligence, is caused by factors one or more events, conditions, or circumstances beyond the party's reasonable control and that by exercise of reasonable diligence the party is unable to prevent or overcome, including without limitation, storm, flood, lightning, earthquake, explosion, civil disturbance, labor dispute, sabotage, war, insurrection, act of God or the public enemy, action of a court, public authority or Independent System Operator. Economic hardship of either Party shall not constitute a Force Majeure under this agreement. Any obligation to pay an amount otherwise owed may not be excused by Force Majeure.

21. Dispute Resolution

21.2 If any dispute that is eligible for arbitration has not been resolved by the duly authorized representatives of the parties within ten (10) days from referral to them, either party may give notice in writing to the other of its desire to submit the dispute to arbitration, and may designate an arbitrator. A copy of such written notice shall also be sent to the Administrative Director of the MPUC and to the Public Advocate. Within fifteen (15) days after the receipt of such notice, the other party may, in writing, serve upon the party invoking such arbitration, a notice designating an arbitrator on its behalf. The two arbitrators so chosen shall within fifteen (15) days after the appointment of the second arbitrator, in writing, designate a third arbitrator. Upon the failure of the party notified to appoint the second arbitrator within such time, the party invoking such arbitration may proceed with the single arbitrator. If the first and second arbitrators are unable to agree on a third arbitrator within fifteen (15) days of the appointment of the second arbitrator, the first and second arbitrator shall invoke the services of the American Arbitration Association to appoint a third arbitrator. Said third arbitrator shall, to the extent practicable, have special competence and experience with respect to the subject matter under

consideration. An arbitrator so appointed shall have full authority to act pursuant to this Section. No arbitrator, whether chosen by a party hereto or appointed, shall have the power to amend or add to this Agreement. The party calling the arbitration shall, within twenty (20) days after either (i) the failure of the other party to name an arbitrator or (ii) the appointment of the third arbitrator, as the case may be, fix, in writing, a time and a place of hearing (which shall be in the city where the T&D's central office is located), to be not less than twenty (20) days from delivery of notice to the other party. The arbitrator or arbitrators shall, thereupon, proceed promptly to hear and determine the controversy pursuant to the then current rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules shall conflict with the then current provisions of the laws of the State of Maine relating to arbitration, such conflict shall be governed by the then current provisions of the laws of the State of Maine relating to arbitration. Such arbitrator or arbitrators shall fix a time within which the matter shall be submitted to him or them by either or both of the parties, and shall make his or their decision, within ten (10) days after the final submission to him or them unless, for good reasons to be certified by him or them in writing, he or they shall extend such time. The decision of the single arbitrator, or two of the three arbitrators, shall be taken as the arbitration decision. Such decision shall be made in writing and in duplicate, and one copy shall be delivered to each of the parties. The arbitrator or arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances, whether or not such damages may be available under state or federal law, the Federal Arbitration Act, or under the commercial arbitration rules of the American Arbitration Association, and the Parties hereby waive their right, if any, to recover any such damages. The arbitrator or arbitrators by his or their award shall determine the manner in which the expense of the arbitration shall be borne, except that each party shall pay the costs of its own counsel. Each party shall accept and abide by the decision. The award of the arbitral tribunal shall be final except as otherwise provided by applicable law. Judgment upon such award may be entered by the prevailing party in any court designated in Section 23, or application may be made by such party to any such court for judicial acceptance of such award and an order of enforcement.

26.1 This Agreement may be amended by an instrument in writing, signed by both Parties, or by Order of the MPUC subject to MPUC approval. No amendment or modification shall be made by course of performance, course of dealing, or usage of trade.