

**NATURAL GAS PARTICIPANT AGREEMENT FOR POWEROPTIONS® MEMBERS**

Contract Number:

<b>BUYER:</b>			<b>SUPPLIER:</b>		
City of Newton			DIRECT ENERGY BUSINESS MARKETING, LLC		
527 Washington St			1 Hess Plaza		
Newton, MA 02458			Woodbridge, NJ 07095		
<b>Contact</b>	<b>Phone</b>	<b>Fax</b>	<b>Sales Manager</b>	<b>Phone</b>	<b>Fax</b>
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<b>Local Distribution Company ("LDC")</b>	
LDC Transportation Rate Class	See Exhibit B
Other LDC Services to be Elected	See Exhibit B
Delivery Point(s)	The interconnection between LDC and
Business Meter(s)	
Sales Tax Exempt Number	

This Firm Natural Gas Participant Agreement for PowerOptions® Members (the "Agreement") is made and entered into as of this 5<sup>th</sup> day of February 2015 by and between Direct Energy Business Marketing, LLC ("Supplier"), a Delaware limited liability corporation with offices located at 1 Hess Plaza Woodbridge, NJ 07095 and City of Newton, ("Participant" or "Buyer") with offices located at 527 Washington St, Newton, MA 02458. 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® Program organized by PowerOptions, Inc., ("PowerOptions"), a non-profit corporation organized under the laws of the Commonwealth of Massachusetts and section 501(c)(3) of the Internal Revenue Code. PowerOptions organized and administers the PowerOptions® 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 PowerOptions Natural Gas Program Agreement dated February 5, 2015, governing the terms and conditions of Supplier's participation in the PowerOptions® 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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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 Natural Gas Participant Agreement for PowerOptions Members ("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 11/01/2015 (the "Effective Date") until 10/31/2017 but in no event shall the term hereof extend beyond October 31, 2019 (the "Term"). 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, 2019 that the meter(s) with respect to such Account 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 confirmed 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 one hundred and twenty (120) 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 Massachusetts Department of Public Utilities ("MDPU") from time to time. 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 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 one hundred and twenty (120) days of total contract exposure. Buyer shall provide such Credit Assurances 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 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 one hundred and twenty (120) 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) 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 E.

(b) If any Material Change (defined below) occurs during the term of an "accepted" Pricing Confirmation, then Supplier may pass through to Buyer some or all of the incremental third-party costs or credits Supplier reasonably incurs to supply natural gas as a result of such Material Change, 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 beginning sixty (60) days or more following written notice of such Material Change to Buyer (with a copy to PowerOptions) and ending with the expiration of the Pricing Confirmation. All billing of such Material Change costs or credits with respect to Accounts which are the subject of a Pricing Confirmation shall (a) 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.

"Material Change" means, as to any Account, a substantial increase or decrease in Supplier's 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 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) Change in Use

(i) Buyer warrants that it has disclosed or will disclose to Supplier any and 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 the related Enrolled Accounts (as hereinafter defined) by more than ten percent (10%).

(ii) In the event that Buyer's annual usage for any Enrolled Account (as defined below) exceeded thirty thousand (30,000) dekatherms 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:

- (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;
- (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.

Notwithstanding the foregoing, Buyer shall have no liability to Supplier, including for increased supply costs or charges or penalties imposed by relevant market entities directly attributable to usage variations of Buyer, exclusive of variations relating to weather effects, to the extent the total usage of natural gas under all Enrolled Accounts of participants in the PowerOptions program supplied by Supplier does not vary by more than five percent (5%) from the total usage under all Enrolled Accounts of participants in the PowerOptions program supplied by Supplier for the corresponding month (or if not available, from the total Contract Quantity) in the immediately preceding year, adjusted for variations relating to weather effects.

In the event there is such a variation in excess of five (5%) and Buyer has failed to provide 90 days' notice to Supplier as required hereunder, Supplier may charge Buyer the incremental third-party costs or credits Supplier reasonably incurs to supply natural gas as a result of Buyer's change in use. 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. Such documentation shall include a report based on seller's system of record, showing, at a minimum:

- (i) such Customer's actual usage for the current month; and
- (ii) contract quantity for Customer for that month.

Such additional costs or credits for changed usage will be charged as if the participant's accounts were being served under the Monthly Based Swing equivalent to a "0% Swing" product as detailed under Exhibit A.

5. **NOMINATIONS, PENALTIES AND BALANCING:** All nominations, balancing or similar charges and any penalties relating to transportation of natural gas sold and purchased hereunder to the Delivery Point(s), or from the Delivery Point(s) to the Business Meter(s), shall be the responsibility of Supplier; provided that at the option of Supplier, if Buyer purchases balancing services on its LDC system as identified by Supplier, Supplier shall be responsible for the cost of such services and shall, at the option of Buyer, either pay such cost directly or deduct such cost from amounts owed by Buyer to Supplier.

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 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:

(a) 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.



(b) **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 local distribution company (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 said 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 they each 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, 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 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 Centrica plc 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, 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, 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 5 (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; 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 ten (10) or more business days prior to the next meter reading date, 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 two or more Business Days prior to the next meter read date or the next scheduled meter reading date of such Account, whichever is earlier, in which case the effective date of termination shall be the next subsequent meter reading date two or more days after Buyer has either informed the LDC of the termination or initiated supply with another supplier with respect to such Account. 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 Centrica plc, a company incorporated in the United Kingdom under the Companies Act of 1985, the ultimate corporate parent of the Supplier ("Ultimate Parent"), to at all times during the Term of this Agreement maintain a guarantee in the form attached hereto as Exhibit F in an aggregate dollar amount equal to one-hundred fifty percent (150%) of the total of the Cost Exposure for the remaining Term of this Agreement for all Account as of the Calculation Date (the "Participant Guarantee"). The Calculation Date and Cost Exposure are described below.

Where:

"Calculation Date" will be every twelve (12) months beginning with the Execution Date of the Program Agreement.

"Contract Cost" is, with respect to contracts under the Price Option in Section 4 of the Participant Agreement, the remaining Supply Period amount of Energy, at the Calculation Date, multiplied by the Contract Price.

"Cost Exposure" is the number produced by subtracting the Contract Cost of each Account from the Market Cost on the Calculation Date, provided that Cost Exposure of each Account shall not be less than zero.

"Market Price" the sum of the Commodity Price and the appropriate Basis Price as defined below, except where the Participant is allocated a capacity assignment from the LDC.

"Commodity Price" is the settlement price on the Calculation Date of physical natural gas as shown on the CME Website as the Henry Hub Natural Gas Futures (NG).

Basis Price for Non-capacity Assigned Accounts: For purposes of this calculation, the most recent settlement prices shown on the CME Clearport Platform for Algonquin City Gates Natural Gas (Platts-IFERC) Basis Futures under the symbol B4.

Basis Price for Capacity Assigned Accounts: The basis price for a capacity assigned account shall equal the capacity assigned rate as calculated from the Participant's distribution company's tariff. The capacity assigned shall be as listed on Exhibit B of each Participant's Agreement. If for any such account the capacity assigned is less than that required to serve the Participant, the additional Basis shall be priced as if the capacity is unassigned.

"Market Cost" is with respect to contracts under the Price Option in Section 4 of the Participant Agreement, the remaining Supply Period amount of the Energy, at the Calculation Date, multiplied by the Market Price.

PowerOptions shall have the right to request a recalculation of the Participant Guarantee, up to four times per year, and upon such request, Supplier shall recalculate the Participant Guarantee, provided, however, that PowerOptions may only request such recalculation if the market price is twenty-five percent (25%) higher than the market price assumed at the last Calculation Date or recalculation date.

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:** Buyer shall, subject to its obligations under applicable law, use reasonable efforts to maintain the confidentiality of any confidential information provided to it by Supplier. 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 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 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; (4) this Agreement is a forward contract; and (5) 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.


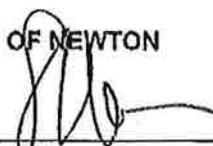
With respect to the services to be supplied under this Agreement, the Parties acknowledge and agree that, no warranty, guarantee or other obligation of PowerOptions is expressed or implied with respect to its organization of the natural gas program or any actions relating to the execution of this Agreement. 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 Exhibits A, and B, contains the entire agreement between the Parties and there are no prior or contemporaneous, written or oral, promises, representations, agreements or warranties affecting it.

CITY OF NEWTON	
By: 	By: 
Name: <u>David Gilbert</u>	Name: <u>Seth D. Warren</u>
Title: <u>Manager, New England</u>	Title: <u>Mayor, City of Newton</u>
Date: <u>Direct Sales</u>	Date: <u>2.5.15</u>

**Approved for CONTRACTING Contractors,  
PLANNING, DESIGN, BUILD, AND BUILD/OPER/MAINT**

Back account(s) and balance is/are checked in the appropriate program and the appropriate amount for each 1) Local Distribution Company, 2) Provider Type (exp only) 111999, or 3) capacity 111999 and 3) monthly price of account or group of accounts, with 1 and 2 by reference, before it is right to be a copy of a record 111999 for each account and each pricing consideration that is a copy of a record.

2003-04		2004-05		2005-06		2006-07		2007-08		2008-09		2009-10		2010-11		2011-12		2012-13		2013-14		2014-15		2015-16		2016-17		2017-18		2018-19		2019-20		2020-21		2021-22		2022-23		2023-24		2024-25		2025-26		2026-27		2027-28		2028-29		2029-30		2030-31		2031-32		2032-33		2033-34		2034-35		2035-36		2036-37		2037-38		2038-39		2039-40		2040-41		2041-42		2042-43		2043-44		2044-45		2045-46		2046-47		2047-48		2048-49		2049-50		2050-51		2051-52		2052-53		2053-54		2054-55		2055-56		2056-57		2057-58		2058-59		2059-60		2060-61		2061-62		2062-63		2063-64		2064-65		2065-66		2066-67		2067-68		2068-69		2069-70		2070-71		2071-72		2072-73		2073-74		2074-75		2075-76		2076-77		2077-78		2078-79		2079-80		2080-81		2081-82		2082-83		2083-84		2084-85		2085-86		2086-87		2087-88		2088-89		2089-90		2090-91		2091-92		2092-93		2093-94		2094-95		2095-96		2096-97		2097-98		2098-99		2099-00		2100-01		2101-02		2102-03		2103-04		2104-05		2105-06		2106-07		2107-08		2108-09		2109-10		2110-11		2111-12		2112-13		2113-14		2114-15		2115-16		2116-17		2117-18		2118-19		2119-20		2120-21		2121-22		2122-23		2123-24		2124-25		2125-26		2126-27		2127-28		2128-29		2129-30		2130-31		2131-32		2132-33		2133-34		2134-35		2135-36		2136-37		2137-38		2138-39		2139-40		2140-41		2141-42		2142-43		2143-44		2144-45		2145-46		2146-47		2147-48		2148-49		2149-50		2150-51		2151-52		2152-53		2153-54		2154-55		2155-56		2156-57		2157-58		2158-59		2159-60		2160-61		2161-62		2162-63		2163-64		2164-65		2165-66		2166-67		2167-68		2168-69		2169-70		2170-71		2171-72		2172-73		2173-74		2174-75		2175-76		2176-77		2177-78		2178-79		2179-80		2180-81		2181-82		2182-83		2183-84		2184-85		2185-86		2186-87		2187-88		2188-89		2189-90		2190-91		2191-92		2192-93		2193-94		2194-95		2195-96		2196-97		2197-98		2198-99		2199-00		2200-01		2201-02		2202-03		2203-04		2204-05		2205-06		2206-07		2207-08		2208-09		2209-10		2210-11		2211-12		2212-13		2213-14		2214-15		2215-16		2216-17		2217-18		2218-19		2219-20		2220-21		2221-22		2222-23		2223-24		2224-25		2225-26		2226-27		2227-28		2228-29		2229-30		2230-31		2231-32		2232-33		2233-34		2234-35		2235-36		2236-37		2237-38		2238-39		2239-40		2240-41		2241-42		2242-43		2243-44		2244-45		2245-46		2246-47		2247-48		2248-49		2249-50		2250-51		2251-52		2252-53		2253-54		2254-55		2255-56		2256-57		2257-58		2258-59		2259-60		2260-61		2261-62		2262-63		2263-64		2264-65		2265-66		2266-67		2267-68		2268-69		2269-70		2270-71		2271-72		2272-73		2273-74		2274-75		2275-76		2276-77		2277-78		2278-79		2279-80		2280-81		2281-82		2282-83		2283-84		2284-85		2285-86		2286-87		2287-88		2288-89		2289-90		2290-91		2291-92		2292-93		2293-94		2294-95		2295-96		2296-97		2297-98		2298-99		2299-00		2300-01		2301-02		2302-03		2303-04		2304-05		2305-06		2306-07		2307-08		2308-09		2309-10		2310-11		2311-12		2312-13		2313-14		2314-15		2315-16		2316-17		2317-18		2318-19		2319-20		2320-21		2321-22		2322-23		2323-24		2324-25		2325-26		2326-27		2327-28		2328-29		2329-30		2330-31		2331-32		2332-33		2333-34		2334-35		2335-36		2336-37		2337-38		2338-39		2339-40		2340-41		2341-42		2342-43		2343-44		2344-45		2345-46		2346-47		2347-48		2348-49		2349-50		2350-51		2351-52		2352-53		2353-54		2354-55		2355-56		2356-57		2357-58		2358-59		2359-60		2360-61		2361-62		2362-63		2363-64		2364-65		2365-66		2366-67		2367-68		2368-69		2369-70		2370-71		2371-72		2372-73		2373-74		2374-75		2375-76		2376-77		2377-78		2378-79		2379-80		2380-81		2381-82		2382-83		2383-84		2384-85		2385-86		2386-87		2387-88		2388-89		2389-90		2390-91		2391-92		2392-93		2393-94		2394-95		2395-96		2396-97		2397-98		2398-99		2399-00		2400-01		2401-02		2402-03		2403-04		2404-05		2405-06		2406-07		2407-08		2408-09		2409-10		2410-11		2411-12		2412-13		2413-14		2414-15		2415-16		2416-17		2417-18		2418-19		2419-20		2420-21		2421-22		2422-23		2423-24		2424-25		2425-26		2426-27		2427-28		2428-29		2429-30		2430-31		2431-32		2432-33		2433-34		2434-35		2435-36		2436-37		2437-38		2438-39		2439-40		2440-41		2441-42		2442-43		2443-44		2444-45		2445-46		2446-47		2447-48		2448-49		2449-50		2450-51		2451-52		2452-53		2453-54		2454-55		2455-56		2456-57		2457-58		2458-59		2459-60		2460-61		2461-62		2462-63		2463-64		2464-65		2465-66		2466-67		2467-68		2468-69		2469-70		2470-71		2471-72		2472-73		2473-74		2474-75		2475-76		2476-77		2477-78		2478-79		2479-80		2480-81		2481-82		2482-83		2483-84		2484-85		2485-86		2486-87		2487-88		2488-89		2489-90		2490-91		2491-92		2492-93		2493-94		2494-95		2495-96		2496-97		2497-98		2498-99		2499-00		2500-01		2501-02		2502-03		2503-04		2504-05		2505-06		2506-07		2507-08		2508-09		2509-10		2510-11		2511-12		2512-13		2513-14		2514-15		2515-16		2516-17		2517-18		2518-19		2519-20		2520-21		2521-22		2522-23		2523-24		2524-25		2525-26		2526-27		2527-28		2528-29		2529-30		2530-31		2531-32		2532-33		2533-34		2534-35		2535-36		2536-37		2537-38		2538-39		2539-40		2540-41		2541-42		2542-43		2543-44		2544-45		2545-46		2546-47		2547-48		2548-49		2549-50		2550-51		2551-52		2552-53		2553-54		2554-55		2555-56		2556-57		2557-58		2558-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Page 1 of this Pricing Confirmation is a billable price only for each account listed on Page 2 of this Pricing Confirmation (and the referenced Service Order, if applicable). All accounts on this Pricing Confirmation shall be subject to the same pricing for a commercial printing within the Agreement, for all accounts in the related information on the actual print.

Accepted and Agreed to:	Accepted:	Printed:	Date:
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Jeff Warren  
Mayor  
2.5.15

DRIFT ENERGY BUSINESS MGMT CO, LLC

Signature:  
Print Name:  
Title:  
Date:

**David Gilbert**  
Manager, New England  
Direct Sales

Page 1 of 61 Pricing Confirmation is valid only for the account listed on Page 2 of this Pricing Confirmation (linked by reference identification below) in rights. All records in this Pricing Confirmation are subject to the terms and conditions of the applicable Accounting (for this) records in the applicable information on the official website.

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Setti D. Warren  
May 2.5.15

Signature: David Gilbert  
Manager, New England  
Direct Sales



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts

Office of the Mayor *PowerOptions Natural Gas Participant Agreement*

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

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

February 5, 2015

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

This letter is to serve as authorization to release to Direct Energy 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 Direct Energy and five (5) years from the date of this letter with respect to PowerOptions, Inc. two (2) all

Very truly yours,

Memucup  
[Buyer's Signature]



## 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. Swing Options - Discounts for Swing

With respect to each Account, but only with respect to pricing of the Contract Quantity for Accounts subject to the Full Plant Option, Basis Prices will be discounted a minimum of \$0.15 per Dth if a Monthly Swing option of 10% bandwidth is selected by Buyer, as reflected in Products 2 and 3 in the table below, and a minimum of \$0.22 per Dth if a Monthly Swing option of 0% bandwidth is selected, as reflected in Products 4 and 5 in the table below. Market volatility and customer specific load shapes are factors that may increase the discounts above.

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

Product	Volume Purchase at Contract Price		Index Selected for Settlement	Price for Volume Outside of Product Swing Bandwidth	
	Minimum	Maximum		Basis Premium (Excess)	Basis Discount (Deficient)
1. Full Plant (No Swing)	0%	n/a	n/a	n/a	n/a
2. Monthly Swing (10%) with Capacity Assignment	90%	110% Contract Volume	Monthly	Index + \$.20/Dth	Index - \$.20/Dth
3. Monthly Swing (10%) Without Capacity Assignment	90%	110% Contract Volume	Monthly	Index + \$.30/Dth	Index - \$.30/Dth
4. Monthly Swing (0%) With Capacity Assignment	100%	100% Contract Volume	Monthly	Index + \$.20/Dth	Index - \$.20/Dth
5. Monthly Swing (0%) Without Capacity Assignment	100%	100% Contract Volume	Monthly	Index + \$.20/Dth	Index - \$.20/Dth
6. Daily Swing (10%) With or Without Capacity Assignment	90%	110% Contract Volume	Daily	Index + \$.15/Dth	Index - \$.10/Dth
7. Daily Swing (0%) With or Without Capacity Assignment	100%	100% Contract Volume	Daily	Index + \$.15/Dth	Index - \$.10/Dth

With respect to NYMEX natural gas commodity pricing, if Buyer has not accepted the offer described in (a) above three (3) Business Days before the expiration of the then current commodity pricing, then the price for the next month will be established at the last NYMEX Henry Hub natural gas commodity closing price before such month for each month for which Buyer has not accepted NYMEX natural gas commodity pricing.

**Full Plant Product (No 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 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 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. 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, 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 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 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. 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.

### 3. Indexed Priced Option - Daily Based Index

Under the Daily Index Option, 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 maximum of \$0.25 per Dth, 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.



Exhibit C

BAPD Rev. 10.12.06

## CENTRICA PLC

### Guarantee

This Guarantee (this "Guarantee") is dated October 13th, 2006 and made and entered by:

1. Centrica Plc (Registered Number 3033654) whose registered office is at 18 Millstream, Maldenhead Road, Windsor, Berkshire SL4 5GD ("Guarantor"); in favour of:
2. Each of the beneficiaries listed in the Schedule hereto (each a "Contract Party").

### WHEREAS

- (A) Each Contract Party and Direct Energy Services LLC (the "Obligor"), a subsidiary of Guarantor have entered into a program agreement for the purchase of electricity and related services (the "Program Transactions") or have entered into, and are contemplating entering into, transactions for the purchase and sale of natural gas and electricity, or options thereon (the "Physical Transactions"), and have entered into, and are contemplating entering into, swap, option and other financially-settled derivative transactions, which transactions will be evidenced by one or more swap agreements, confirmations and/or master agreements (all such swap, option or other financially-settled derivative transactions and the agreements evidencing same whether entered into prior to, on or after the date hereof being referred to herein as "Derivative Transactions"). The Program Transactions, the Physical Transactions and the Derivative Transactions, individually and collectively in respect of a Contract Party, shall be referred to herein as the "Transactions";
- (B) Guarantor will directly or indirectly benefit from the Transactions; and
- (C) As a condition precedent to the Transactions, each Contract Party has required that Guarantor unconditionally guarantee to that Contract Party all payment obligations of Obligor to it under the Transactions.

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

### PAYMENT GUARANTEE

1. Guarantor absolutely, irrevocably and unconditionally guarantees to each Contract Party all payment obligations of Obligor set forth in the Transactions relating to that Contract Party (the "Obligations") up to an aggregate amount that shall not exceed the figure set out in the Schedule in respect of that Contract Party. The maximum aggregate liability for all Transactions under this Guarantee shall not exceed \$89,000,000 ("Maximum Aggregate Amount"). This Guarantee is a continuing guarantee effective during the term of the Transactions.
2. This Guarantee shall terminate in respect of a Contract Party on the later of termination for whatever reason of the Transactions and the fulfilment of all accrued obligations of the Obligor and the Guarantor to the Contract Party under the Transactions and hereunder.
3. Guarantor WAIVES any right to require as a condition to its obligations hereunder to a Contract Party 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 a 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;
  - (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.
4. 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 primary payment obligations concerning which Guarantor is the principal obligor.
5. The liability of Guarantor to each Contract Party is limited to the Obligations arising out of Transactions between that Contract Party and the Obligor. Under no circumstances shall the Guarantor have any liability to a Contract Party in respect of Obligations arising out of Transactions entered into between the Obligor and any other Contract Party.
6. The obligations of Guarantor to a Contract Party 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 in respect of such Contract Party:
- (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 a Contract Party, or any other person or entity to enforce, assert or exercise any right, privilege, power or remedy conferred on a Contract Party or any other person or entity under the Transactions or at law, or any action on the part of a Contract Party or such other person or entity granting indulgence or extension of any kind;
  - (iv) the release by any Contract Party of any collateral securing all or any portion of the Obligations, or the release by any Contract Party of any person other than the Obligor or the Guarantor from any liability with respect to all or any portion of the Obligations;
  - (v) the settlement or compromise of any Obligations; and
  - (vi) a change of status, composition, structure or name of Obligor, including, without limitation, by reason of bankruptcy, liquidation, insolvency, merger, dissolution, consolidation or reorganisation.

#### RESERVATION OF DEFENCES

7. Without limiting the defences and rights of Guarantor not expressly waived in this Guarantee, Guarantor expressly reserves unto itself all rights, counterclaims and other defences of Obligor relating to the Obligations, except those arising out of the bankruptcy, insolvency, dissolution or liquidation of Obligor.

#### NOTICE

8. All notices and communications made pursuant to this Guarantee shall be in writing and delivered personally or mailed recorded delivery, postage prepaid, or sent by facsimile, as follows:

To Guarantor:  
Centrica Plc

Millstream  
Maldenhead Road  
Windsor  
Berkshire SL4 5GD  
United Kingdom  
Attn: General Counsel and Company Secretary  
Facsimile: +44 1753 494602

To a Contract Party:

To the address set out in the Schedule hereto.

9. Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during recipient's normal business hours or at the beginning of recipient's next business day after receipt if not received during recipient's normal business hours. Any party may change its address to which notice is to be given hereunder by providing notice of the same in accordance with Clause 8, in the case of the Guarantor, to all of the Contract Parties, and in the case of a Contract Party, to the Guarantor.

MISCELLANEOUS


10. This Guarantee shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, and the parties hereto hereby submit to the exclusive jurisdiction of the state courts located in Suffolk County, Massachusetts.
11. No term or provision of this Guarantee shall be amended, modified, altered, waived, supplemented or terminated except in writing signed by the Guarantor and each Contract Party, except that the Guarantor shall be entitled to amend this Guarantee by including additional beneficiaries to this Guarantee to the Schedule hereto, or by increasing the amounts set forth in the Schedule or the Maximum Aggregate Amount, without the prior consent of any Contract Party, by the execution and delivery to each new Contract Party and to each Contract Party whose amount is increased, or to all Contract Parties if the Maximum Aggregate Amount is increased, of an amendment to this Guaranty in the form attached hereto as Exhibit A.
12. The Guarantor may not assign or transfer (whether by way of security or otherwise) this Guarantee or any interest or obligation in or under this Guarantee without the prior written consent of each Contract Party. No Contract Party may assign or transfer (whether by way of security or otherwise) this Guarantee or any interest in this Guarantee without the prior written consent of the Guarantor, except that the obligations of the Guarantor under this Guarantee may be assigned by a Contract Party to a successor or to a purchaser of all or substantially all of such Contract Party's assets to the extent that the Obligations have been so assigned to such successor or purchaser in accordance with the terms of the Transactions. Any purported assignment or transfer that is not in accordance with this Clause 12 shall be void. Subject to the foregoing this Guarantee shall be binding upon and enure to the benefit of and be enforceable by the respective successors, assigns and transferees of Guarantor and each Contract Party.
13. This Guarantee embodies the entire agreement and understanding between Guarantor and each Contract Party and supersedes all prior agreements and understandings relating to the subject matter hereof.
14. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof. References to Clauses are to clauses of this Guarantee.
15. This Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one document.
16. Guarantor shall make payment in United States dollars and without deductions to a Contract Party in immediately available funds of all sums due hereunder within ten (10) business days

of written demand for the same by such Contract Party (which demand shall set forth the basis and the calculation of the amount for which demand is made and which shall in the absence of manifest error be conclusive).

17. Guarantor warrants that this Guarantee is its legally binding obligation enforceable by each Counter Party in accordance with its terms (except as the enforceability of this Guarantee may be limited by any applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors' rights generally and by general principles of equity), and further warrants that all necessary consents and authorisations for the giving and implementation of this Guarantee have been obtained.
18. Until all amounts which may be or become payable under the Transactions have been irrevocably paid in full, Guarantor shall not by virtue of this Guarantee be subrogated to any rights of a Contract Party or claim in competition with a Contract Party against Obligor in connection with any matter relating to or arising from the Obligations or this Guarantee.
19. This Guarantee shall be construed as a separate guarantee between the Guarantor and each Contract Party. None of the rights of any Contract Party under this Guarantee shall be affected by any actions taken by any other Contract Party against the Guarantor under this Guarantee. The discharge of any obligations by the Guarantor under this Guarantee to a Contract Party (whether by performance or otherwise) shall in no way affect the Guarantor's obligations to any of the other Contract Parties under this Guarantee.

Guarantor has caused this Guarantee to be executed as a deed as of the day and year first above written.

CENTRICA PLC

By:   
Title:

By:   
Title:

**Schedula Beneficiarios**

[illegible]

Exhibit A

CENTRICA PLC

Amendment to Guarantee to [Add Contract Parties] [Increase Amounts]

Reference is made to the Guarantee (the "Guarantee") of Centrica PLC (Registered Number 3033654) ("Guarantor") dated [ ], 2006 in favor of the beneficiaries (each a "Contract Party") listed in the Schedule thereto (the "Schedule").

Pursuant to Clause 11 of the Guarantee, the Guarantor may amend the Guarantee to include additional beneficiaries by adding additional beneficiaries to the Schedule or to increase the amounts set forth in the Schedule with respect to the Contract Parties, in each case without the consent of any Contract Party.

[The Guarantor hereby amends the Guarantee by adding to the Schedule the additional Contract Parties identified on the Schedule Supplement hereto, which shall constitute a part of the Schedule to the Guarantee. Each Contract Party listed on the attached Schedule Supplement shall be a "Contract Party" under the Guarantee entitled to all the benefits thereof from and after the date hereof.]

[The Guarantor hereby amends the Guarantee by increasing the amounts set forth in the Schedule to the amounts set forth in the Revised Schedule hereto, which Revised Schedule shall constitute a revision to the Schedule and the amounts set forth therein, if they are greater than the amounts in the Schedule as previously amended, shall be the applicable amounts for such Contract Parties from and after the date hereof.] [As a result of such increases, the second sentence of Clause 1 of the Guarantee is hereby amended to read: The maximum aggregate liability for all Transactions under this Guarantee shall not exceed \$ \_\_\_\_\_ ("Maximum Aggregate Amount").]

Guarantor warrants that the Guarantee as amended hereby is its legally binding obligation enforceable by each Counter Party in accordance with its terms (except as the enforceability of the Guarantee 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 authorisations for the giving and implementation of this Amendment to Guarantee have been obtained.

Guarantor has caused this Amendment to Guarantee to be executed as a deed as of [ ], 2006.

CENTRICA PLC

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

**Schedule Supplement  
[Additional Beneficiaries]  
[Increased Guarantee Cap]**

[illegible]

BOSS11 12079765.2

**DEED OF AMENDMENT TO GUARANTEE**

WHEREAS, Centrica plc ("Guarantor") issued a Guarantee ("the Guarantee") dated on or about October 13, 2006 in favor of PowerOptions, Inc. and other Beneficiaries ("Contract Party" or "Contract Parties"); and

WHEREAS Guarantor wishes to amend the Guarantee in the manner set forth below:

By execution of this Deed of Amendment, the Guarantee shall be amended as follows:

1. Terms used in the Guarantee shall have the same meaning when used in this Deed of Amendment.
2. The first WHEREAS clause of the Guaranty is revised in its entirety to read as follows:

(A) Direct Energy Services LLC and Direct Energy Business LLC (collectively the "Obligor"), both of which are subsidiaries of Guarantor, and each Contract Party have entered into one or more program agreements for the purchase of electricity and related services (the "Program Transactions") or have entered into, and/or are contemplating entering into, transactions for the purchase and sale of natural gas and/or electricity, or options thereon evidenced by one or more Participant Agreements (the "Physical Transactions"), and/or have entered into, and/or are contemplating entering into, swap, option and other financially-settled derivative transactions, which transactions will be evidenced by one or more swap agreements, confirmations and/or master agreements (all such swap, option or other financially-settled derivative transactions and the agreements evidencing same whether entered into prior to, on or after the date hereof being referred to herein as "Derivative Transactions"). The Program Transactions, the Physical Transactions and the Derivative Transactions, individually and collectively in respect of a Contract Party, shall be referred to herein as the "Transactions";

3. The first sentence of the first paragraph under the subheading "Payment Guarantee" is revised in its entirety to read as follows:

"Guarantor absolutely, irrevocably and unconditionally guarantees payment in full to each Contract Party of all payment obligations of Obligor set forth in the Transactions relating to that Contract Party (the "Obligations") up to an aggregate amount that shall not exceed the figure set out in the Schedule in respect of that Contract Party."

4. Except as amended hereby, all other terms and conditions of the Guarantee shall remain the same and in full force and effect.

IN WITNESS WHEREOF the Guarantor has caused this Deed of Amendment to be executed as a Deed by its duly authorized officers to be effective as of this 8th day of April, 2010.

EXECUTED and DELIVERED as a DEED  
by Centrica plc acting by a director and its  
Company Secretary

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Company Secretary



## SECOND DEED OF AMENDMENT TO GUARANTEE

WHEREAS, Centrica plc ("Guarantor") issued a Guarantee ("the Guarantee") dated on or about October 13, 2006 in favor of PowerOptions, Inc. and other Beneficiaries, including Participants, ("Contract Party" or "Contract Parties") which Guarantee was amended by Deed of Amendment to Guarantee dated on or about April 8, 2010, collectively herein the "Guarantee"; and

WHEREAS Guarantor wishes to amend the Guarantee in the manner set forth below:

By execution of this Second Deed of Amendment, the Guarantee shall be amended as follows:

1. Terms used in the Guarantee shall have the same meaning when used in this Second Deed of Amendment.
2. The first WHEREAS clause of the Guaranty as revised by the Deed of Amendment is revised in its entirety to read as follows:

(A) Direct Energy Services LLC and Direct Energy Business LLC (collectively the "Obligor"), both of which are subsidiaries of Guarantor, and each Contract Party have entered into one or more program agreements for the purchase of electricity and related services (the "Program Transactions") or have entered into, and/or are contemplating entering into, transactions for the purchase and sale of natural gas and/or electricity, or options thereon evidenced by one or more Participant Agreements (the "Physical Transactions"), and/or have entered into, and/or are contemplating entering into, swap, option and other financially-settled derivative transactions, which transactions will be evidenced by one or more swap agreements, confirmations and/or master agreements (all such swap, option or other financially-settled derivative transactions and the agreements evidencing same whether entered into prior to, on or after the date hereof being referred to herein as "Derivative Transactions"). The Program Transactions, the Physical Transactions and the Derivative Transactions, individually and collectively in respect of a Contract Party, shall be referred to herein as the "Transactions";

3. The first sentence of the first paragraph under the subheading "Payment Guarantee" is revised in its entirety to read as follows:

"Guarantor absolutely, irrevocably and unconditionally guarantees payment in full to each Contract Party of all payment obligations of Obligor set forth in the Transactions relating to that Contract Party (the "Obligations") up to an aggregate that shall not exceed the figure set out in the Schedule in respect of that Contract Party."

4. The second paragraph under the subheading "Payment Guarantee" is revised in its entirety to read as follows:

"This Guarantee shall remain in full force and shall not terminate in respect to any Contract Party until the later of termination for whatever reason of the Transactions and the fulfillment of all accrued obligations of the Obligor and the Guarantor to the Contract Party under the Transactions and hereunder. In no event shall Guarantor attempt to withdraw, terminate or modify this Guarantee or otherwise deem this Guarantee expired without a minimum of thirty (30) days written notice to PowerOptions and each of the Participants to any Participant Agreement."

5. Except as amended hereby, all other terms and conditions of the Guarantee shall remain the same and in full force and effect.

IN WITNESS WHEREOF the Guarantor has caused this Second Deed of Amendment to be executed as a Deed by its duly authorized officers to be effective as of this \_\_\_th day of September, 2013.

EXECUTED and DELIVERED as a  
DEED by Centrica plc acting by a director  
and its Company Secretary

CENTRICA PLC

By: 

Title: COMPANY SECRETARY

By: 

Title: DIRECTOR

PowerOptions, Inc.

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

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

\_\_\_\_\_  
Company Secretary

## DEED OF AMENDMENT No. TO GUARANTEE

WHEREAS, Centrica plc ("Guarantor") issued a Guarantee (the "Guarantee") dated October 13, 2006 in favour of PowerOptions, Inc. and other Beneficiaries (each a "Contract Party"); and

WHEREAS Guarantor wishes to amend the Guarantee in the manner set forth below:

By execution of this Deed of Amendment, the Guarantee shall be amended as follows:

1. Terms used in the Guarantee shall have the same meaning when used in this Deed of Amendment.
2. The first WHEREAS clause of the Guaranty is revised in its entirety to read as follows:

Direct Energy Services, LLC and Direct Energy Business, LLC, both of which are subsidiaries of Guarantor, and each Contract Party, have entered into one or more program agreements for the purchase of electricity and related services (the "Power Program Transactions") or have entered into, and/or are contemplating entering into, transactions for the purchase and sale of natural gas and/or electricity, or options thereon evidenced by one or more Participant Agreements (the "Physical Transactions") and/or have entered into, and/or are contemplating entering into swaps, options and other financially-settled derivative transactions, which transactions will be evidenced by one or more swap agreements, confirmations and/or master agreements (all such swap, option or other financially-settled derivative transactions and the agreements evidencing same whether entered into prior to, on or after the date hereof being referred to herein as "Derivative Transactions").

3. A new WHEREAS clause is added to the Guaranty to read as follows:

Hess Energy Marketing, LLC, a subsidiary of Guarantor (together with Direct Energy Services, LLC and Direct Energy Business, LLC, the "Obligor"), and each Contract Party, have entered into one or more program agreements for the purchase of natural gas and related services ("Gas Program Transactions") and together with the "Power Program Transactions," the "Program Transactions") and/or may contemplate entering into Derivative Transactions.

4. A new WHEREAS clause is added to the Guaranty to read as follows:

The Program Transactions, the Physical Transactions and the Derivative Transactions, individually and collectively in respect of a Contract Party, shall be referred to herein as the "Transactions."

5. The following paragraph is added as new Section 7 to the Guarantee:

This Guarantee has been amended to support the obligations of the Obligor under the Power Program Transactions and the Gas Program Transactions, respectively, each of which represent independent and separate obligations of Obligor. It is understood, however, that (i) the minimum amount under each Program

Transaction shall be deemed satisfied so long as the minimum amount of this Guarantee is not less than \$40 Million; and (ii) the provision of this consolidated Guaranty shall otherwise neither reduce nor expand the guarantee obligations of the Obligor under any Program Transaction.

6. Except as amended hereby, all other terms and conditions of the Guarantee shall remain the same and in full force and effect.

IN WITNESS WHEREOF the Guarantor has caused this Deed of Amendment to be executed as a Deed by its duly authorized officers as at April 16, 2014.

EXECUTED and DELIVERED as a DEED  
by Centrica plc acting by a director and its  
Company Secretary

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Company Secretary

PowerOptions, Inc.

By: 

Name: CYNTHIA A. ARCANÉ

Title: PRESIDENT + CEO