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**Agreement to Sell and Purchase Energy.** This is an agreement between City Power and Gas, LLC (“ESCO”) and the undersigned customer (“Customer”) under which Customer shall initiate electricity service and begin enrollment with ESCO (the “Agreement”). Subject to the terms and conditions of this Agreement, ESCO agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of electricity, as estimated by ESCO, necessary to meet Customer’s requirements based upon consumption data obtained by ESCO or the delivery schedule of the Local Distribution Utility (the “LDU”). The amount of electricity delivered under this Agreement is subject to change based upon data reflecting Customer’s consumption obtained by ESCO or the LDU’s delivery schedule.

**TERM** - This Agreement shall commence as of the date Customer’s notice regarding the change of Customer’s provider to ESCO is deemed effective by the LDC, and shall continue for 24 months thereafter (the “Initial Term”). Upon completion of the Initial Term, customer shall receive written notification from ESCO of the renewal terms at least 30 days and no more than 60 days prior to the renewal date, apprising Customer of any proposed changes in the terms and conditions of this Agreement and of the Customer’s right to renew, terminate or renegotiate this Agreement. If you wish to reject the renewal of this Agreement without incurring an early cancellation fee, if any, you will have three (3) business days from the day you receive the first billing statement of your Renewal Term to cancel by calling us at 1-877-518-9339. When receiving service on a month-to-month basis, the Customer may provide written notice of termination or call ESCO at 1-877-518-9339 or call their delivery company to terminate the agreement. ESCO may terminate this Agreement by providing 30 days’ written notice to the Customer.

**Pricing, Billing, and Termination.** Unless otherwise agreed to in writing, the price for all electricity sold under this Agreement shall be a Fixed Price indicated in the customer’s Sales Agreement, plus, all applicable taxes, fees, charges, costs, expenses and margins. ESCO will invoice Customer monthly for electricity delivered under this Agreement, as measured by the LDU, and Customer will pay each invoice in full within 20 days of the invoice date or be subject to a late payment charge of 1.5% per month. Customer may receive a single bill for both commodity and delivery costs from either ESCO or the LDU, or each of the LDU and ESCO may invoice Customer separately. Customer payments remitted in response to a consolidated bill shall be pro-rated (when so required) in accordance with procedures adopted by the New York State Department of Public Service (the “DPS”). In the event of failure to remit payment when due, ESCO may terminate commodity service and seek suspension of distribution service in conformance with the Home Energy Fair Practices Act (“HEFPA”). Notwithstanding the foregoing, for all residential customers and commercial customers solicited through telesales marketing, the early termination fee will be no greater than \$100 if the remaining term is less than 12 months, a \$15.00 fee will be charged for all returned payments.

**Assignment.** Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of ESCO. ESCO may sell, transfer, pledge, or assign the accounts receivable, revenues, or proceeds hereof, in connection with any financing agreement, purchase of accounts receivables program or billing services agreement, and may assign this Agreement and the rights and obligations there under, to another energy supplier, energy services company or other entity as authorized by the DPS.

**Information Release Authorization.** Customer authorizes ESCO to obtain and review information regarding Customer’s credit history from credit reporting agencies and the following information from the LDU: consumption history; billing determinants; utility account number; credit information; public assistance status; existence of medical emergencies, status as to whether Customer has a medical emergency, is human needs, elderly, blind or disabled and data applicable to cold weather periods under

**PSL § 32 (3); and information pertaining to PSL § 33, tax status and eligibility for economic development or other incentives. This information may be used by ESCO to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to ESCO. This authorization will remain in effect during the Initial Term and any Renewal Term. Customer may rescind this authorization at any time by providing written notice thereof to ESCO or by calling ESCO at 1-877-518-9339. ESCO reserves the right to cancel this Agreement in the event Customer rescinds the authorization.**

**Consumer Protections.** The services provided by ESCO to Customer are governed by the terms and conditions of this Agreement. ESCO will provide at least 15 days' notice prior to the cancellation of service to Customer. Customer may obtain additional information by contacting ESCO at 1-877-518-9339 or the DPS at 1-888-697-7728, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at [www.dps.ny.gov](http://www.dps.ny.gov).

**Cancellation.** Customer may rescind this Agreement within 3 business days after the signing or receipt of this Agreement, whichever comes first, by contacting ESCO at 1-877-518-9339 or in writing. Customer is liable for all ESCO charges until Customer returns to the LDU or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trued-up subsequent to the final meter reading.

**Agency.** Customer hereby appoints ESCO as agent for the purposes of (i) acquiring the supplies necessary to meet Customer's electricity needs, and (ii) arranging, contracting for and administering transportation and related services over transmission facilities and those of the LDU needed to deliver electricity to the Customer's premises. These services are provided on an arm's length basis and market-based compensation is included in the price noted above.

**Title.** All electricity sold under this Agreement shall be delivered to a location considered the "Point of Delivery", which shall be at the NY ISO ESCO load bus (located outside of the municipality where Customer resides), and shall constitute the point at which title transfers and the sale occurs. ESCO will indemnify and hold harmless Customer from all taxes, royalties, fees or other charges incurred before title passes with respect to the electricity provided hereunder.

**Warranty.** This Agreement, including applicable attachments, constitutes the entire Agreement between Customer and ESCO. ESCO makes no representations or warranties other than those expressly set forth in this Agreement, and ESCO expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

**Force Majeure.** ESCO will make commercially reasonable efforts to provide electricity hereunder but ESCO does not guarantee a continuous supply of electricity to Customer. Certain causes and events out of the control of ESCO ("Force Majeure Events") may result in interruptions in service. ESCO will not be liable for any such interruptions caused by a Force Majeure Event, and ESCO is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the LDU (including, but not limited to, a facility outage on its electricity distribution lines).

**Liability.** The remedy in any claim or suit by Customer against ESCO will be solely limited to direct actual damages. By entering into this Agreement, Customer waives any right to any other remedy in law or equity. In no event will either ESCO or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

**Contact Information.** Customer may contact ESCO’s Customer Service Center at 1-877-518-9339, Monday through Friday 9:00 a.m. - 5:00 p.m. EST (contact center hours subject to change). Customer may write to ESCO at: City Power and Gas, LLC, 10115 E Bell Rd, Suite 107-405, Scottsdale, AZ 85260.

**Dispute Resolution.** In the event of a residential billing dispute or a disagreement involving ESCO’s service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact ESCO by telephone or in writing as provided above. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the DPS pursuant to its Complaint Handling Procedures (“Procedures”) by calling the DPS at 1.800.342.3377 or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.ny.gov>. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute.

**Choice of Laws.** Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of New York. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles.

**Taxes and Laws.** Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description due and payable with respect to service provided under this Agreement, other than taxes based on ESCO’s net income, shall be paid by Customer, and Customer agrees to indemnify ESCO and hold ESCO harmless from and against any and all such taxes. This Agreement is subject to present and future legislation, orders, rules, regulations or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided hereunder.

**Regulatory Changes.** If at some future date there is a change in any law, rule, regulation or pricing structure whereby ESCO is prevented, prohibited or frustrated from carrying out the terms of the Agreement, at its sole discretion ESCO shall have the right to cancel this Agreement on 15 days’ notice to Customer.

**Emergency Service. Emergency Service Contacts.** In the event of a gas leak, electric power outage or other emergency, please use the following toll-free numbers to directly contact your utility:

Central Hudson Gas & Electric	1-800-527-2714	Rochester Gas & Electric	1-800-743-1701
Orange & Rockland Electric	1-877-434-4100	Orange & Rockland Gas	1-800-533-5325
National Grid	1-800-892-2345	National Fuel Gas	1-800-444-3130
Consolidated Edison	1-800-752-6633	NYSEG	1-800-572-1131

**Parties Bound.** This Agreement is binding upon the parties hereto and their respective successors and legal assigns.

