

## BUSINESS ELECTRICITY AUTHORIZATION MASSACHUSETTS COMMERCIAL SALES Index Product

### SERVICE INFORMATION

Contract Type: ☒ Switching Service Provider ☐ Renewal

Business Name ("Customer"): Empire South Prop LLC

*See attached Addendum A for LDU Account Nos., and Billing and Service Addresses*

Contact Name: Mark Waxler

Email: elennon@power-logix.com

Primary Phone: (508) 769-0617 Secondary Phone: Fax:

Duns#: Tax ID #:

**Tax Exemption:** If a non-renewing customer, a completed tax exemption certificate must accompany this Agreement. If no certificate is attached, NextEra Energy Services will assume that sales to Customer are subject to Taxes and will process Customer's account accordingly.

Initial Term: 12 Months

Start Month/Year: 12/2016

**Agreement:** The contract documents governing Customer's purchase of electricity from NextEra Energy Services Massachusetts, LLC ("NextEra Energy Services") are comprised of the Electric Supply Terms of Service ("TOS") attached hereto as Exhibit A (version ECOMNEMATOS091114), this Business Electricity Authorization ("BEA"), which is a part of the Customer's Terms of Service, and any addenda to this BEA (collectively, the "Agreement"). Any capitalized terms not defined in this BEA shall have the meanings set forth in the TOS. Any inconsistency between the BEA and the TOS shall be governed by the BEA. Any inconsistency between the addenda to the BEA and the BEA shall be governed by such addenda. Customer hereby authorizes NextEra Energy Services, for the duration of this Agreement, to become its electricity supplier and to perform the necessary tasks to establish electricity service with NextEra Energy Services.

**Price:**  (Customer initials please - required)

The Price during the Initial Term for each settlement interval is equal to [(the day ahead Locational Marginal Price ("LMP") for the applicable load zone plus the Retail Adder of \$42.24 per MWh)/1,000]. The LMP is published by ISO-NE in \$/MWh, and has no minimum price per MWh. Such Price includes the charge for electricity and estimated charges for the following electricity components: congestion, renewable energy credits to meet any state renewable portfolio standards, ancillary services, reliability must run, capacity and similar generation resource and adequacy plans or programs. Charges for Line Losses and UFE are not included in the Price. Accordingly, Energy Usage of the Accounts will be increased for Line Losses and UFE. "Line Losses" are defined in the TOS and "UFE" is unaccounted for energy, a separate loss factor adjustment provided by the LDU, if applicable.

For meters that collect and store interval data, NextEra Energy Service relies on interval metered usage provided by the LDU; for other meters, NextEra Energy Services relies on load profiles provided by the LDU. Customer will pay NextEra Energy Services the total monthly charge for electric service (referred to as the "NextEra Energy Services Electricity Charge") during the term of this Agreement, which is the sum of (i) the product of Customer's Energy Usage during a Billing Cycle and the Price or Holdover Price, whichever is applicable as described herein, (ii) the Monthly Base Charge, if any, (iii) any Pass-Through Charges (including costs and charges arising from winter reliability programs and similar fuel adequacy plans or programs), and (iv) Taxes. The NextEra Energy Services Electricity Charge is subject to any Price Component Adjustments as described in the "Pricing" section of the TOS. Depending on the bill format, Pass-Through Charges and/or Price Component Adjustments may appear on Customer's bill as a line item or Price adjustment.

**Billing:** The portion of Customer's bill for electricity shall be calculated as the sum of the Settlement Interval amounts for the Billing Cycle. Each Settlement Interval amount equals the Price for such Settlement Interval multiplied by the adjusted Energy Usage for such Settlement Interval.

**Product Conversion Option:** Once during each successive annual period beginning on the Service Commencement Date (as defined in the TOS) until the end of the Initial Term, Customer will have the right to request NextEra Energy Services to convert the Price for all electricity supplied under this Agreement to a fixed price product for the remainder of the Initial Term. In order to do so, the Parties shall comply with the following procedures: Customer provides written notice to NextEra Energy Services in accordance with the TOS at least thirty (30) days prior to the next meter read date of the Account, or if there are multiple Accounts, the date for the Account with the earliest meter read date (in either of such cases, the "Conversion Start Date"). Upon actual receipt of such notice, NextEra Energy Services will use commercially reasonable efforts to provide price quote(s) to Customer within three (3) business days after such request.

If the Parties agree to the fixed price and all terms related to such product conversion, the terms and conditions of such agreement will be set forth in a mutually acceptable Product Conversion amendment and signed by an authorized representative of each Party. Such amendment must have an effective date at least fifteen (15) days prior to the date of the conversion unless such time period has been waived by NextEra Energy Services in writing. If: (i) the Parties fail to reach mutual agreement to the fixed price and/or any other term, or (ii) the fully-signed amendment has an effective date within such fifteen (15) day period (if NextEra Energy Services has not waived such period in writing), the Price and product herein shall remain unchanged through expiration of the Initial Term.

**Independent Decisions:** Notwithstanding any provision in this Agreement to the contrary, the following terms apply: Customer makes its own independent decision to enter into this Agreement and makes its own independent decisions to authorize NextEra Energy Services to convert the Price to a fixed price. Customer acts on its own account to determine if any such purchase is financially appropriate for it regardless if that determination is based on its own judgment or on any advice Customer may obtain from third parties (including NextEra Energy Services). Customer is not relying and shall not rely on communications, information, or explanations of any type from NextEra Energy Services as trading advice, investment advice or an endorsement to take any specific action or withhold action.

**Monthly Base Charge:** None.

**Switching Fee:** NextEra Energy Services does not charge a fee for Customer to switch to its supply.

**Authorization and Acknowledgement:** By signing this BEA or by verbal authorization received over telephone (the "Verbal Authorization"), Customer hereby agrees, as of the Effective Date (or, if Verbal Authorization is used, upon receipt of this Agreement, whichever is later), that Customer has read the Agreement and agrees to the terms and conditions set forth herein. The undersigned below or the person providing the Verbal Authorization, as applicable, warrants and represents that he/she is legally authorized to enter into this Agreement on behalf of Customer. **This Agreement is not valid or binding unless and until signed by both Parties (for written agreements, a facsimile will be accepted as if it were an original) or Customer has provided its Verbal Authorization.**

Empire South Prop LLC	NextEra Energy Services Massachusetts, LLC:
Authorized Signature: _____	Authorized Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Effective Date: _____
→ <b>CUSTOMER: PLEASE INITIAL THE BOX ON PAGE 1</b>	Sales Representative: Charles Jimenez

**Rescission:** Customer shall have the right to rescind its execution of this Agreement without charge or penalty within three (3) days of its receipt of a fully executed copy of this Agreement by sending notice of its rescission to NextEra Energy Services in accordance with the Notice provisions of the TOS; PROVIDED HOWEVER THAT TO THE EXTENT ALLOWED BY APPLICABLE LAW, CUSTOMER HEREBY WAIVES THIS RESCISSION RIGHT.



**BUSINESS ELECTRICITY AUTHORIZATION  
MASSACHUSETTS COMMERCIAL SALES**

**Addendum A**

**CUSTOMER NAME:** Empire South Prop LLC

**ACCOUNTS INCLUDED IN AGREEMENT:**

EDU Account No.	Service Address City, State and Zip	Billing Address City, State and Zip	New Account or Renewal?
2797685013	219 Littleton Rd Pole 92 Westford, MA 01886	219 Littleton Rd Westford, MA 01886	New Account
6535848023	219 Littleton Rd Pole D24068 Westford, MA 01886	219 Littleton Rd Westford, MA 01886	New Account

Customer Initials: \_\_\_\_\_

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

NextEra Energy Services Initials: \_\_\_\_\_

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

## Exhibit A

### NEXTERA ENERGY SERVICES MASSACHUSETTS, LLC ELECTRIC SUPPLY TERMS OF SERVICE

THE FOLLOWING ARE YOUR ELECTRIC SUPPLY TERMS OF SERVICE ("TOS"), which are a part of your Electricity Sales Agreement, by and between NextEra Energy Services Massachusetts, LLC ("NextEra Energy Services") and Customer.

#### 1. DEFINITIONS:

"Account" means the Customer Account(s) identified in the BEA.

"Agreement" is defined in the BEA and includes any amendments signed by the Parties.

"Average Monthly Bill" means the sum of (i) the product of the average monthly Energy Usage by Customer (or if an average cannot be computed due to limited service by NextEra Energy Services or other circumstances, such average monthly usage as is reasonably determined by NextEra Energy Services) and the Price or Holdover Price, whichever is applicable, and (ii) the Monthly Base Charge.

"Billing Cycle" means, for each Account(s), the period between successive monthly meter read dates during the term of this Agreement.

"BEA" means the Business Electricity Authorization signed by the Parties, including any addenda, and exhibits.

"Change in Law" means a change in law, regulation, rule, ordinance, order or decree by a governmental authority or ISO-NE, including, without limitation, LDU tariffs and ISO-NE tariffs, market rules, operating protocols, nodal definitions and zonal definitions. A "change," as used above, includes, without limitation, any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness or any change in construction or interpretation.

"Delivery Charges" means those charges payable by Customer to the LDU for transmission and distribution services provided by the LDU, ISO-NE or other third parties.

"Delivery Point" means the point of interconnection between a third-party transmission or delivery system and the LDU transmission or delivery system.

"Early Termination Fee" means (i) for termination of the entire Agreement, two (2) Average Monthly Bills for all Account(s) for each year or partial year of the remaining Initial Term, or (ii) for termination or deletion of an Account, two (2) Average Monthly Bills for such terminated or deleted Account for each year or partial year of the remaining Initial Term.

"Effective Date" means is the date the BEA is signed by both Parties (and appears by NextEra Energy Services' signature in the BEA), or the date of the telephonic third party verification of the Customer's verbal authorization, as applicable.

"Energy Usage" means Customer's total metered energy usage for the Account(s) measured in kilowatt hours ("kWh") for the applicable period, which usage shall be increased by NextEra Energy Services to allow for Line Losses if Line Losses are not expressly included in the Price set forth in the BEA .

“Holdover Period” means the period of the Agreement between the expiration of the Initial Term and the termination of the Agreement.

**“Holdover Price” means the price for electricity delivered during the Holdover Period, as set forth on NextEra Energy Services’ website at [www.nexteraenergyservices.com](http://www.nexteraenergyservices.com) in the Commercial section under “Legal Notices and Terms.”**

“Initial Term” means the period commencing on the Effective Date and continuing for the respective LDU Account Number(s) until expiration, from and after the Service Commencement Date, of the number of months specified for the Initial Term of service set forth in the BEA.

“Insufficient Notice Fee” means (i) for termination of the entire Agreement, one-half (1/2) of the Average Monthly Bill for all Account(s) for each year or partial year of the remaining Initial Term, or (ii) for termination or deletion of an Account, one-half (1/2) of the Average Monthly Bill for such terminated or deleted Account for each year or partial year of the remaining Initial Term.

“ISO-NE” means the New England Independent System Operator or any successor thereto.

“Late Fee” means a fee of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is lower, assessed on invoices for the NextEra Energy Services Electricity Charge that are not paid when due.

“Line Losses” shall mean a loss factor provided by the LDU or, if one is not available, one determined by NextEra Energy Services.

“Local Distribution Utility” or “LDU” means a public utility that owns electric transmission and/or distribution facilities that deliver electricity to the facilities to which the Account(s) pertain.

“Monthly Base Charge” means (i) for the Initial Term, a fixed monthly charge per LDU Account number, if any, as set forth in the BEA, and (ii) for the Holdover Period, a fixed monthly charge per LDU Account number, as set forth on NextEra Energy Services’ website at [www.nexteraenergyservices.com](http://www.nexteraenergyservices.com) in the Commercial Section under “Legal Notices and Terms.”

“NextEra Energy Services Electricity Charge” means the sum of (i) the product of Customer’s Energy Usage during a Billing Cycle and the Price or Holdover Price, whichever is applicable, (ii) the Monthly Base Charge, if any, (iii) Pass-Through Charges, and (iv) Taxes.

“Party” means either NextEra Energy Services or Customer, and “Parties” means both NextEra Energy Services and Customer.

“Pass-Through Charges” means costs and charges arising from winter reliability programs and similar fuel adequacy plans or programs, and new or increased costs and charges with respect to the purchase, sale, acquisition, delivery, transmission and/or distribution of electricity including, without limitation, those arising from Price Component Adjustments, MAC Events, and a Change in Law, all of which are passed through to Customer by NextEra Energy Services.

“Price” means the unit price for electric service provided to Customer by NextEra Energy Services during the Initial Term, as set forth in the BEA.

“Service Commencement Date” means the meter read date during or after the Start Month (or, if such date is at or near the end of the month prior to the Start Month, the first day of the Start Month) on which the LDU successfully switches Customer’s respective Account(s) to NextEra Energy Services; provided that, in the case of electric supply already being provided by NextEra Energy Services to Customer, the Service Commencement Date means the meter read date during or after the Start Month.

"Start Month" is the calendar month as specified in the BEA; provided, however, that if the Start Month is not specified as a month subsequent to the month during which the Effective Date occurs, then "Start Month" means the month during which the Effective Date occurs.

"Taxes" means all federal, state, municipal or other governmental taxes, duties, fees, levies, premiums, assessments, surcharges, withholdings, or any other charges of any kind relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed thereon, but excluding taxes on net income.

**2. SERVICES.** During the Initial Term and any Holdover Period, NextEra Energy Services shall provide Customer's full electricity requirements for the Account(s) specified in this Agreement, and Customer shall obtain its full electricity requirements for such Account(s) exclusively from NextEra Energy Services on the terms and conditions specified in this Agreement. Notwithstanding the foregoing, NextEra Energy Services shall be under no obligation to supply any Accounts under a residential rate class and, if NextEra Energy Services does supply such Accounts, Customer hereby represents and warrants to NextEra Energy Services that such Accounts are used for commercial or governmental purposes.

**3. ENERGY CONSUMPTION INFORMATION.** At NextEra Energy Services' request, Customer will provide an authorization which grants NextEra Energy Services the authority to obtain Customer's current and historical electricity cost and usage data from the LDU, Customer's payment and credit history and other information specified in the authorization. Customer hereby agrees, upon request, to provide NextEra Energy Services with facility descriptions, operating information, meter identification numbers and locations, and such other information available to Customer as NextEra Energy Services may reasonably require to provide electric service pursuant to this Agreement. Customer's expected energy usage for the Accounts may change for various reasons including, without limitation, additional equipment going on-line, ramp-up in equipment use, equipment modifications, increasing operating hours, remodel of facilities, new construction, applications for new construction permits, participation in demand response programs, participation in special government electricity supply programs or on-site electric generation of any type or size. Customer shall provide NextEra Energy Services with at least thirty (30) days' advance notice whenever it believes that Customer's estimated monthly aggregate usage will materially change from Customer's historical monthly usage, weather normalized (each such material change being a "MAC Event"), and shall provide good faith estimates of such usage changes. For each MAC Event, regardless of whether notice is provided, Customer shall pay NextEra Energy Services any losses, and/or new or increased costs and charges, reasonably associated with such MAC Event. Such losses, and/or costs and charges, may be charged to Customer as Pass-Through Charges.

**4. ENROLLMENT.** NextEra Energy Services shall use commercially reasonable efforts to promptly enroll Customer's Account(s) with the LDU in accordance with the intended Service Commencement Date, and Customer agrees to take steps to cooperate with NextEra Energy Services' efforts to perform such enrollment. NextEra Energy Services shall not be held liable to Customer for delay or failure in enrolling Customer's Account(s) if such delay or failure was due to any cause beyond NextEra Energy Services' control. Further, notwithstanding any provision in the Agreement to the contrary, it is possible that, for various reasons such as the Account is not existing, the Account is not active or the Account is not the "first in", some or all the Accounts cannot be enrolled. All such un-enrolled Account(s) shall be subject to payment of the Early Termination Fee (or damages, if greater) by Customer. NextEra Energy Services shall not be required to serve such un-enrolled Account(s). If any such un-enrolled Account(s) are subsequently enrolled during the Initial Term, such subsequently enrolled Account(s) shall be automatically added to service under this Agreement without an amendment hereto (i.e., an amendment signed by both Parties).

**5. TERM OF AGREEMENT.** This Agreement shall become effective on the Effective Date, with service commencing for each respective Account(s) on the Service Commencement Date, and shall continue for the Initial Term. After the Initial Term expires, this Agreement shall continue on a month-to-month basis at the Holdover Price unless and until either Party terminates this Agreement upon at least thirty (30) days written notice, in which event such termination shall be effective on the date following the date of such notice on which the LDU successfully switches Customer's Account(s) to another competitive electricity supplier or to the LDU's generation service.

**6. PRICING.** The Price for electric supply provided to Customer by NextEra Energy Services during the Initial Term is set forth in the BEA and subject to any adjustments set forth in this Agreement. Such Price includes the charge for electricity and estimated charges for the electricity components set forth in the BEA. Such charges for

such electricity components have been estimated by NextEra Energy Services using information and data provided by Customer, the LDU and/or ISO-NE. To the extent, if any, that any of such charges are higher based on information received from the LDU or ISO-NE, or if such charges increase during the term of this Agreement, NextEra Energy Services may charge Customer an allocation for such increased charges ("Price Component Adjustments") as part of the NextEra Energy Services Electricity Charge. Depending on the bill format, Price Component Adjustments may appear on Customer's bill as a line item or Price adjustment.

The price for electricity during the Holdover Period shall be the Holdover Price, not the Price. The Holdover Price, which includes the same energy components as the Price, may change without prior written notice to Customer at the sole discretion of NextEra Energy Services until either Party terminates the Agreement pursuant to the "Term of Agreement" Section of this TOS. The Holdover Price is also subject to any Price Component Adjustments.

**7. BILLING AND FEES.** Each month, Customer shall pay the NextEra Energy Services Electricity Charge (as defined herein). Unless the Parties agree in writing to alternate payment arrangements, Customer consents to be billed monthly for services provided hereunder through one of the following billing options, as permitted by law, at NextEra Energy Services' discretion: (i) Customer will receive one invoice from the LDU that includes the NextEra Energy Services Electricity Charge, Delivery Charges and applicable Taxes, (the "Consolidated Billing Option"); or (ii) Customer will receive two invoices, one from NextEra Energy Services for the NextEra Energy Services Electricity Charge and one from the LDU for Delivery Charges, each with applicable Taxes (the "Dual Billing Option"). Under the Consolidated Billing Option, Customer will make payments directly to the LDU pursuant to the applicable LDU tariff. Under the Dual Billing Option, payments are due to NextEra Energy Services within sixteen (16) days from the date of the invoice. If, under the Consolidated Billing Option or Dual Billing Option, any payment for the NextEra Energy Services Electricity Charge made by Customer to NextEra Energy Services or to the LDU is late under the applicable payment terms, Customer may be assessed the Late Fee and its delinquent balances may be reported to a credit agency. NextEra Energy Services may apply any credit balance on a particular Account to a balance owed on any other Customer Account. NextEra Energy Services may assess a twenty five dollar (\$25) fee against any transaction not processed due to insufficient funds or credit availability for any method of payment, including checks, bank drafts or credit card. If the LDU fails to timely obtain or transmit a meter reading, NextEra Energy Services will issue or cause to be issued a bill to Customer based on its estimated Energy Usage and charges during the Billing Period. NextEra Energy Services will include or cause to be included in any subsequent bill from NextEra Energy Services, adjustments related to previous billings, including estimates, previous billing errors, meter read errors, or other errors or omissions. In the event that Customer disputes a bill for the NextEra Energy Services Electricity Charge, Customer must pay any undisputed portion of the bill by the due date specified in the applicable payment terms. If the unpaid, disputed portion of the bill is subsequently resolved in favor of NextEra Energy Services, the Late Fee will be applied to such unpaid amounts. Depending on the bill format, Pass-Through Charges and/or Price Component Adjustments may appear on Customer's bill as a line item or Price adjustment. In the event of deferred billing of any Pass-Through Charge to NextEra Energy Services, estimated Pass-Through Charges may be billed to Customer in the interim and Customer shall pay such estimated Pass-Through Charges.

**8. DISPUTE RESOLUTION.** If you feel your bill is incorrect, or you dispute any aspect of your service, please contact a NextEra Energy Services Customer Care representative at 866-322-4392 (toll free). If NextEra Energy Services is unable to resolve your dispute, you may file a complaint with the Massachusetts Department of Telecommunications and Energy (the "Department") which may refer your dispute to the Massachusetts Office of Dispute Resolution ("MODOR") if the amount in dispute exceeds one hundred dollars (\$100) and the dispute is within the Department's jurisdiction (i.e., complaints filed pursuant to G.L. c. 164, § 1F(2) or 220 C.M.R. § 11.07(4)), or you may request that the dispute be referred to MODOR for resolution. Please take notice that the Department has entered into an agreement with MODOR wherein MODOR agrees to provide mediation services to resolve certain disputes between electric suppliers and certain customers.

**9. CREDIT AND DEPOSIT REQUIREMENTS.** NextEra Energy Services reserves the right to request a credit history on an applicant for service prior to offering service and to refuse service to anyone who does not meet NextEra Energy Services' credit standards. If NextEra Energy Services determines, prior to offering service or at any time during the term of this Agreement, that Customer's credit is unsatisfactory, NextEra Energy Services has the right to require Customer to make alternate payment or credit arrangements to ensure prompt payment of amounts owed or otherwise payable under this Agreement including, without limitation, the posting of an initial or subsequent security deposit, or an increase in the amount of any deposit. In addition, if Customer's Energy Usage increases during the

term of this Agreement, NextEra Energy Services may require a security deposit or an increase in the amount of an existing security deposit. The posting or amount of any security deposit hereunder shall be subject to any limitations imposed by applicable law. A security deposit in the form of cash that is held for more than six months from the date of deposit shall earn simple interest thereon at the rate payable on two-year, United States Treasury notes. A security deposit shall be refunded by means of a credit to Customer's bill once Customer has made twenty-four (24) consecutive payments without assessment of any Late Fees. Upon termination of service, NextEra Energy Services will apply any security deposit plus accrued and unpaid interest thereon toward any outstanding balance on Customer's final bill and will refund any remaining security deposit.

**10. TERMINATION OF AGREEMENT BY CUSTOMER.** If Customer terminates this Agreement, in whole or as relating to any single Account(s), before the end of the Initial Term, Customer shall pay NextEra Energy Services the Early Termination Fee. In addition, if Customer terminates this Agreement with less than thirty (30) days advance written notice, Customer shall be assessed the Insufficient Notice Fee. In the event that Customer terminates this Agreement as provided for in this Section, Customer shall be obligated to pay for the electricity and related services provided to Customer pursuant to this Agreement prior to the date that such termination becomes effective, including Late Fees, if applicable. Should NextEra Energy Services incur damages greater than the Early Termination Fee as a result of such termination of this Agreement by Customer before the end of the Initial Term, Customer shall pay to NextEra Energy Services such damages. Such damages will be calculated based upon the net present value of the product of (i) the difference between the Price and the market prices that are commercially available to NextEra Energy Services for the same quantities of energy which would have been supplied hereunder for the remainder of the Initial Term, and (ii) the estimated Energy Usage by Customer, as determined by NextEra Energy Services, during the remainder of the Initial Term. To determine "market prices," as used above, NextEra Energy Services may consider, among other things, settlement prices of applicable NYMEX power futures contracts, quotations from leading dealers in energy swap contracts and other bona fide offers from parties participating in the wholesale and/or retail power markets, which may include NextEra Energy Services and/or its affiliates, all as commercially available to NextEra Energy Services and all as adjusted for the length of the remaining Initial Term and differences in transmission costs and volume. NextEra Energy Services will not be required to enter into any replacement transaction in order to determine such market prices or actual damages. The Parties agree that the amounts recoverable hereunder are a reasonable estimate of loss and not a penalty.

**11. TERMINATION OF AGREEMENT BY NEXTERA ENERGY SERVICES.** NextEra Energy Services reserves the right to terminate this Agreement if Customer (i) fails to make timely payment of all amounts due NextEra Energy Services; or (ii) fails to post a security deposit under the provisions of the Credit and Deposit Requirements Section herein within ten (10) days of a request for deposit; or (iii) breaches any warranty or representation to NextEra Energy Services; or (iv) defaults on any material obligation under this Agreement; or (v)(A) makes an assignment for the benefit of creditors, (B) files a petition or otherwise authorizes the commencement of a proceeding under the Bankruptcy Code or similar law for protection of creditors, or has such petition filed against it, (C) otherwise becomes bankrupt or insolvent, or (D) is unable to pay its debts as they fall due; or (vi) enters into a merger with, or sells substantially all of its assets to, another entity that fails to assume Customer's obligations under this Agreement. In the event service is terminated in accordance with this Section, Customer shall pay the Early Termination Fee or, if applicable, damages incurred by NextEra Energy Services as provided in this Agreement. NextEra Energy Services will notify Customer of its intent to terminate service at least ten (10) days prior to the effective date of termination and, unless another competitive electricity supplier is chosen by Customer, Customer's electricity will be provided by the LDU under its applicable generation service tariff.

**12. TITLE, RISK OF LOSS AND INDEMNIFICATION.** Title and risk of loss to the electricity sold hereunder shall pass from NextEra Energy Services to Customer when it is delivered to the Delivery Point for each Account(s). Customer shall indemnify and defend NextEra Energy Services from all claims for any loss, damage, or injury to persons or property, including without limitation all consequential, incidentals, exemplary, or punitive damages arising from or relating to the distribution or consumption of electricity at and after the point at which the LDU delivers the electricity to Customer's facilities to which the Account(s) pertain.

**13. FORCE MAJEURE.** In the event that either Party's performance of its obligations under this Agreement, other than payment obligations, is interrupted or delayed by any occurrence not caused by either Party, whether such occurrence is an act of God or public enemy, or whether such occurrence is caused by storm, earthquake, or other natural forces, or by war, riot, public disturbance, labor action, or the acts or omissions of anyone not a Party to this Agreement, then the Party affected by such occurrence shall be excused from such performance and any further



performance required under this Agreement for whatever period is reasonably necessary to remedy the effects of that occurrence.

**14. CHANGE IN LAW.** In the event that there is a Change in Law and such Change in Law results in NextEra Energy Services incurring additional costs and expenses in providing the services contemplated herein, such additional costs and expenses shall be the Customer's responsibility and will be assessed to Customer in NextEra Energy Services' monthly bills as an additional Pass-Through Charge.

**15. REPRESENTATIONS AND WARRANTIES.** Each Party warrants and represents to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform this Agreement; (iii) the execution, verbal authorization, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate or other actions and do not violate any agreement to which it is a party or any laws or regulations applicable to it; and (iv) the Agreement, when delivered, will be valid and legally binding upon it and enforceable in accordance with its respective terms (subject to equitable defenses). Customer further warrants and represents to NextEra Energy Services that it has full power and authority over the provision of electricity to the facilities to which the Account(s) pertain.

**16. DISCLAIMER OF WARRANTY.** NEXTERA ENERGY SERVICES EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING THE QUALITY OF ELECTRICITY DELIVERED TO CUSTOMER PURSUANT TO THIS AGREEMENT, WHETHER WRITTEN, ORALLY EXPRESSED, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**17. LIMITATION OF LIABILITY.** UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES AND DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISIONS OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. THE LIMITATIONS IMPOSED ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE, PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES RESULTING FROM WILLFUL MISCONDUCT OF ANY PARTY.

**18. FORWARD CONTRACT.** The Parties agree that this Agreement is a "forward contract" and that NextEra Energy Services is a "forward contract merchant" for purposes of the United States Bankruptcy Code, as amended, (the "Bankruptcy Code") any payment related hereto will constitute a "settlement payment" as defined in Section 101 (51A) of the Bankruptcy Code.

**19. ATTORNEY'S FEES.** If Customer fails to timely pay amounts due under this Agreement and NextEra Energy Services refers Customer's outstanding balance to an attorney or collection agent for collection, or if NextEra Energy Services files a lawsuit in connection with this Agreement, or collects Customer's outstanding balance through bankruptcy or judicial proceedings, Customer agrees to pay NextEra Energy Services its reasonable fees and expenses (including reasonable attorney's fees) incurred by NextEra Energy Services in connection therewith.

**20. AMENDMENT.** This Agreement may not be amended except by a written amendment signed by both Customer and NextEra Energy Services.

**21. SEVERABILITY.** If any provision of this Agreement is held to be void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect to the extent that the intended essential purposes of this Agreement are not materially altered.

**22. HEADINGS.** Headings are for the convenience of the parties and shall be ignored for purposes of interpreting this Agreement.

**23. ASSIGNMENT.** NextEra Energy Services may assign its rights and obligations under this Agreement to a third party. Customer may not assign its rights and obligations under this Agreement to a third party without the prior

written consent of NextEra Energy Services, which consent shall not be unreasonably withheld. NextEra Energy Services may deny such assignment based on the creditworthiness of the assignee.

**24. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.

**25. WAIVER.** No waiver by any Party hereto of any one or more of such Party's rights under this Agreement, or waiver of a default by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any such right, or any other default whether of a like kind or different nature.

**26. GOVERNING LAW OR VENUE.** This Agreement shall be governed by and construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts. Each party hereby designates the Massachusetts state courts of competent jurisdiction or the United States District Court for the District of Massachusetts as the exclusive courts of proper jurisdiction of any suit, claim, action or other proceedings, whether at law or in equity, relating to this Agreement, and venue for any such suit, claim action or other proceedings shall be in Boston, Massachusetts.

**27. CONFIDENTIALITY.** The Parties agree to keep all terms and provisions of this Agreement confidential and not to disclose the terms of the same to any third parties without the prior written consent of the other Party; provided, however, each Party shall have the right to make any such disclosures to (i) a third party service provider who has a need to know such confidential information to provide services to the disclosing Party and is prohibited from disclosing to another party such Party's confidential information, (ii) governmental agencies and (iii) its own agents, attorneys, auditors, accountants and shareholders or members. If disclosure is sought through process of a court, or a state or federal regulatory agency, the Party from whom the disclosure is sought shall provide reasonable notice thereof to the other Party.

**28. LIMITED AGENT.** NextEra Energy Services' responsibility as Customer's limited agent is limited to the tasks authorized for NextEra Energy Services to provide the services under this Agreement and does not result in imposition on NextEra Energy Services, and Customer hereby waives, any other duties of any kind or nature, including fiduciary duties which may otherwise arise by operation of law.

**29. ENTIRE AGREEMENT.** This Agreement embodies the entire Agreement and understanding between the Parties, and supersedes all prior agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof.

**30. NOTICES.** Any notice or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered to the receiving Party by prepaid registered mail, courier service or facsimile (provided that notice of rescission may be given by email at the email address set forth below). NextEra Energy Services' mailing address and facsimile number to be used for any notices that shall be given to or served on NextEra Energy Services by Customer are set forth below. Customer's mailing address and facsimile number to be used for any notices that shall be given to or served on Customer by NextEra Energy Services are set forth on the BEA. Notice delivered by prepaid registered mail shall be deemed to have been received at the end of the third business day after the date of mailing, or such earlier time as is confirmed by the receiving Party, except that when there is a strike affecting delivery of mail, all notices shall be delivered by courier or by facsimile. Notice delivered by courier shall be deemed to have been received on the business day after it was sent or such earlier time as is confirmed by the receiving Party. Notice sent by facsimile (and notice of rescission sent by email) shall be deemed to have been received at the close of the business day on which it was transmitted (or, if transmitted after the close of business, then on the next business day) or such earlier time as is confirmed by the receiving Party.

**Notice Information:**

For registered mail and courier service – NextEra Energy Services, 20455 State Highway 249, Suite 200,  
Houston, TX 77070

For facsimile – 800-627-8813

For rescission by email – [MA.contracts@nexteraenergyservices.com](mailto:MA.contracts@nexteraenergyservices.com)

**Additional Contact Information:**

For billing and customer service inquiries, email [custserv@nexteraenergyservices.com](mailto:custserv@nexteraenergyservices.com), call 877.528.2890, or fax  
800-627-8813

For contract inquiries, email [contracts@nexteraenergyservices.com](mailto:contracts@nexteraenergyservices.com) or fax 800-627-8813

Internet address: [www.nexteraenergyservices.com](http://www.nexteraenergyservices.com)

Mailing address: 20455 State Highway 249, Suite 200, Houston, TX 77070