

**BARC
ELECTRIC COOPERATIVE**

AGGREGATOR AGREEMENT

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THIS AGGREGATOR AGREEMENT (the "Agreement") is made as of _____, 200_, by and between BARC Electric Cooperative, a Virginia utility consumer service cooperative ("Cooperative") and a Local Distribution Company with its headquarters in Millboro Virginia, and _____, (the "Aggregator"), a _____ corporation with offices at _____ (individually, each a "Party," collectively, the "Parties").

RECITALS

WHEREAS, the Cooperative is a public utility with an exclusive franchise to serve customers located within its service territory;

WHEREAS, the Virginia Electric Utility Restructuring Act, Va. Code §§ 56-576 to 56-596 (the "Act"), as amended, provides for the restructuring of the electric industry in Virginia such that regulated electric utilities must allow non-discriminatory direct access to their distribution systems by Competitive Service Providers of Electricity Supply Service and further provides that, with implementation of such access to the distribution system, the Cooperative will continue to serve as the exclusive electric distribution provider within its service territory;

WHEREAS, the Virginia State Corporation Commission ("Commission"), acting pursuant to the Act, has issued a final order in Case No. PUE-2001-00013 promulgating Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 through VAC 5-312-120, as amended (the "Rules");

WHEREAS, in connection with the provision of Electricity Supply Service in the Cooperative's service territory, the Aggregator (i) intends to provide such services as are authorized in the Rules to be performed by an Aggregator ("Aggregation Service"), and (ii) has been issued License Number _____ by the Commission to provide Aggregation Service to customers in Virginia; and

WHEREAS, an agreement between the Cooperative and the Aggregator is needed for the Aggregator to be registered with the Cooperative to engage in the provision of Aggregation Service in the Cooperative's service territory and access the mass list of eligible customers and other Cooperative maintained information on the secured supplier pages of the Cooperative's Energy Choice Internet web site.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, and the above Recitals, which are incorporated herein, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1. GENERAL TERMS AND CONDITIONS

- 1.1** The Aggregator hereby agrees to: (i) satisfy all requirements of the Act, the Rules, and applicable provisions of the Cooperative's Competitive Service Provider Coordination Tariff on file with the Commission (the "CSP Tariff"); (ii) obtain and maintain a license from the Commission and any licenses, permits or other authorizations from any other federal, state or local agencies required for participation as an Aggregator in the Virginia retail electric supply market; and (iii) execute all applications and agreements required for the Aggregator's provision of Aggregation Service in the Cooperative's service territory. This Agreement is the valid and binding obligation of the Aggregator, enforceable in accordance with the terms contained in the Cooperative's tariffs, as revised from time to time.
- 1.2** This Agreement shall terminate April 30 each year following the Effective Date unless terminated sooner as provided in the Cooperative's CSP Tariff. This Agreement may be renewed in conjunction with the Aggregator satisfying the registration renewal requirements pursuant to the Cooperative's CSP Tariff.
- 1.3** This Agreement shall or may be terminated in the event the Aggregator ceases to participate in or otherwise withdraws from the provision of Aggregation Service to Retail Customers in the Cooperative's service territory.

ARTICLE 2. CONFIDENTIALITY OF INFORMATION

- 2.1** The Aggregator shall adequately safeguard all Customer information and shall not disclose such information unless the Customer authorizes disclosure in accordance with 20 VAC 5-312-60.A.
- 2.2** All Cooperative information made available by the Cooperative to the Aggregator pursuant to this Agreement, including, without limitation, rate class load profile data and information regarding the Cooperative's computer systems or communications systems, shall not be disclosed to third parties without written consent from the Cooperative and shall not be used by the Aggregator for any purpose other than the Aggregator's provision of Aggregation Service to Customers.
- 2.3** The Parties agree that it will be impossible or very difficult to measure in terms of money the damages that would accrue due to any breach of the confidentiality provisions of this Agreement and the Cooperative's CSP Tariff or any failure to perform any obligation herein and, for that reason, among others, the Cooperative is entitled to specific performance of the confidentiality provisions of this Agreement and the Cooperative's CSP Tariff, or injunctive or other equitable relief as a remedy for a breach of the confidentiality provisions of this Agreement and the Cooperative's CSP Tariff. If the Cooperative institutes a proceeding to enforce any part of the confidentiality provisions of this Agreement and the

Cooperative's CSP Tariff, CSP hereby waives any claim or defense that an adequate remedy at law exists. Any such relief shall be in addition to, and not in lieu of, money damages or any other legal remedy available to the Cooperative.

ARTICLE 3. TAXES

- 3.1** All present or future federal, state, municipal or other taxes imposed on the Aggregator by any taxing authority by reason of this Agreement shall be the liability of the Aggregator. The Aggregator shall pay all such taxes to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such taxes, the Aggregator will, if requested, provide the Cooperative with valid tax exemption certificates. If the Cooperative is required to remit any such taxes directly to any applicable taxing authority, other than taxes previously collected by the Cooperative directly from the Aggregator's Customers, the Aggregator indemnifies the Cooperative against, and will pay the Cooperative for, all such tax amounts upon demand.

ARTICLE 4. MISCELLANEOUS

- 4.1 Headings.** Headings or titles of the provisions hereof are for convenience only and shall have no effect on the provisions of the Agreement.
- 4.2 Definitions.** Terms introduced and subsequently capitalized will have the meanings as indicated herein. Other terms capitalized and used in this Agreement will have the meanings as set forth in the Cooperative's CSP Tariff. Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other.
- 4.3 Severability.** Should any provision of this Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof, unless it materially changes the Agreement of the Parties.
- 4.4 Entire Agreement.** This Agreement constitutes the complete agreement of the Parties relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.
- 4.5 Assignment.** This Agreement may not be assigned by the Aggregator without [\(a\) necessary regulatory approval and \(b\) the prior written consent](#) of the Cooperative, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the Aggregator of any of its obligations under this Agreement until such obligations have been assumed by the assignee.

- 4.6 Non-Waiver.** The waiver by either Party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation.
- 4.7 Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia.
- 4.8 Force Majeure.** Neither Party shall be liable for any delay in performing or for failing to perform its respective obligations under this Agreement due to any event of Force Majeure, that is, any cause which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. Financial loss or other economic hardship of either Party shall not constitute an event of Force Majeure under this Agreement.
- 4.9 Indemnification.** The Aggregator shall defend, indemnify and hold harmless the Cooperative from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including the Cooperative's employees or any third parties, or any other liability incurred by the Cooperative, including reasonable attorneys' fees, relating to performance under this Agreement, except to the extent that a court of competent jurisdiction determines that the losses, expenses or damage were caused wholly or in part by any grossly negligent or willful act or omission of the Cooperative.
- 4.10 Resolution of Disputes.** In the event of any controversy or claim arising out of or relating to this Agreement, or breach thereof, the Parties shall use commercially reasonable judgment to resolve the claim or dispute in accordance with the Cooperative's CSP Tariff.
- 4.11 Cancellation, expiration or early termination.** Cancellation, expiration or early termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including, without limitation, payment of any amounts due, warranties, remedies, promises of indemnity and confidentiality.
- 4.12 Notices.** Unless otherwise provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been received when personally delivered, when sent to the address and persons specified in this Agreement by (i) courier delivery; (ii) Federal Express or similar overnight courier delivery; or (iii) U.S. Certified mail, return receipt requested. Notices or communications shall be deemed given on the date of (a) courier or overnight courier delivery; or (b) in the case of transmittal by U.S. Certified mail, return receipt requested, the date the return receipt is signed or delivery is rejected. The following are the primary contacts for all communications related to this Agreement;

BARC Electric Cooperative

Name: Clyde C. Hively Jr., Assistant Manager
Address: P.O. Box 264
100 High Street
Millboro, Virginia 24460-0264
Phone: (800) 846-2272
Fax: (540) 997-9011
Email: @barcelectric.com

[Company Name]:

Name: _____
Address: _____
Phone: _____
Fax: _____
Email: _____

IN WITNESS WHEREOF, the Parties have executed the agreement as of the day and year first above written.

BARC ELECTRIC COOPERATIVE:

By: _____
Name: _____
Title: _____

[COMPANY NAME]:

By: _____
Name: _____
Title: _____