

Municipal Energy Services Agreement

This Municipal Energy Services Agreement (the “**Agreement**”) is entered into as of May 10, 2017 (the “**Effective Date**”) by and between, the [City/Town/Village of _____], a municipal corporation of the State of New York, having its principal offices at [] (“**Municipality**”) and Joule Assets Inc. a Delaware corporation having its principal offices at 2 Depot Plaza, Suite 402, Bedford Hills, New York 10507 (“**Joule**”)(Municipality and Joule are referred to individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Joule is in the business of, among other things, providing consulting and program administration services in connection with municipal energy services (collectively, the “**Municipal Energy Services**”) for energy programs for municipalities and for residents and business located therein (collectively, the “**Municipal Energy Programs**”) including, without limitation, Community Choice Aggregation (“**CCA**”), demand response (“**DR**”), demand management, microgrids, distributed energy resources (“**DER**”), and financing in connection therewith;

WHEREAS, the New York State Public Service Commission has authorized municipalities to participate in CCA pursuant to the Order issued by the New York State Public Service Commission in Case 14-M-0224 - an Order Authorizing Framework For Community Choice Aggregation Opt-Out Program (“**PSC CCA Order**”);

WHEREAS, Municipality is interested in exploring whether CCA and other Municipal Energy Services are appropriate for the Municipality; and

WHEREAS, Municipality desires to engage Joule in connection with the Municipal Energy Services and Joule desires to provide the Municipal Energy Services to Municipality in accordance with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto do agree as follows:

ARTICLE 1. DEFINITIONS

1.1 The following terms shall have the meanings ascribed below:

(a) “**Community Choice Aggregation Program**” or “**CCA Program**” or “**Program**” means a municipal energy procurement program, which replaces the incumbent utility as the default supplier for all Eligible Customers within the Participating Municipality, as defined in the PSC CCA Order.

(b) “**Applicable Law**” means the PSC CCA Order and all statutes, ordinances, laws, rules and regulations that are applicable to the CCA Program and the Services.

(c) “**Bidder**” means a Competitive Supplier that submits a bid in response to the Solicitation.

(d) “**CCA Administrative Fee**” has the meaning ascribed in Section 5.1.

(e) “**CCA Program Administrator**” means Joule.

(f) “**CCA Enabling Legislation**” means a local law or ordinance, adopted by Municipality according to Municipal Home Rule Authority and in compliance with PSC CCA Order, which authorizes Municipality to join a CCA program.

(g) “**Competitive Supplier**” means an entity duly authorized to conduct business in the State of New York as an energy service company (“**ESCO**”) that procures electric power and/or natural gas for Eligible Customers in connection with this CCA Program.

(h) “**Compliant Bid**” means a bid agreed upon by Municipality and Joule.

(i) “**Default Service**” means a supply service provided by the Distribution Utility to customers who are not currently receiving electric service from an ESCO.

(j) “**Distribution Utility**” means the owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.

(k) “**Effective Date**” shall have the meaning ascribed in the preamble to this Agreement.

(l) “**Electric Service Agreement**” or “**ESA**” means the Electric Service Agreement that may be entered into by and between Municipality and the Selected Supplier that contains the terms and condition concerning electricity procurement.

(m) “**Municipal Energy Program**” means a program described in the preamble to this Agreement.

(n) “**Municipal Energy Services**” means the services provided by Joule in connection with one or more Municipal Energy Programs” as described in the preamble.

(o) “**Municipality**” means the municipality described in the preamble.

(p) “**Participating Customer**” means a customer who is eligible to participate in the CCA Program in accordance with the PSC CCA Order and who participate in the CCA Program, including without limitation those who are eligible to participate on an opt-out basis and who have not opted out, and those who are eligible to participate on an opt-in basis and have opted-in.

(q) “**Program Organizer**” means a group proposed by Joule and appointed with the Municipality’s consent in accordance with Article 4 to provide certain services with respect to the CCA Program.

(r) “**PSC CCA Order**” means the April 21, 2016 “Order Authorizing Framework For Community Choice Aggregation Opt-Out Program” issued by PSC in Case 14-M-0224, “Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs.”

(s) “**Public Service Commission**” or “**PSC**” means the New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission.

(t) “**Selected Supplier**” means the supplier of electricity selected by the Municipality following the Solicitation.

(u) “**Solicitation**” has the meaning ascribed in Section 3.2(d).

ARTICLE 2. RIGHTS AND RESPONSIBILITIES OF THE PARTICIPATING MUNICIPALITY

2.1 Municipality agrees to investigate with Joule the benefits and desirability of implementing a CCA Program and other Municipal Energy Programs.

2.2 In the event that Municipality (i) elects to implement a CCA Program within eighteen (18) months from the Effective Date by enacting Enabling Legislation; and (ii) elects to issue a Solicitation to receive Compliant Bids for an Electric Service Agreement from Competitive Suppliers in connection therewith; then, Municipality agrees that Joule will serve as CCA Program Administrator.

2.3 At such time, the Parties will work cooperatively to create such Solicitation, and the CCA Program Administrator, with the Municipality's consent and approval, shall select the winning Competitive Supplier provided that:

(a) The selected Competitive Supplier's proposal must be a Compliant Bid whose bid Joule determines to be the most advantageous to the CCA Program and Municipality based on the evaluation factors set forth in the Solicitation; and

2.4 Municipality may designate a representative to review and participate in the evaluation of the Bids.

(a) In the event a Compliant Bid is received and accepted, Municipality shall execute the ESA (the terms of which shall be consistent with this Agreement and shall be subject to Joule's input and the Municipality's input and the reasonable approval of both Joule and Municipality) with the selected Competitive Supplier in a timely fashion. It is agreed that such ESA will either be a two-party agreement by and between the Municipality and selected Competitive Supplier, or a three-party agreement by and between the Municipality, the selected Competitive Supplier and Joule or another CCA Program Administrator; in either event such ESA will be in accord with, and in contemplation of, this Agreement;

(b) Municipality agrees that the selected Competitive Supplier shall remit a fee to the CCA Program Administrator in accordance with Section 5.1, but the Municipality shall have no obligation to pay or collect any such fees.

2.5 Regardless of whether Municipality elects to implement a CCA Program, in the event that Municipality desires to implement other Municipal Energy Programs and engage Joule's assistance in connection with such implementation, the Parties may, but are not required to, enter into a subsequent agreement describing the scope of Joule's services and the payment to Joule in connection therewith.

2.6 In addition to the foregoing, Municipality:

(a) Shall assist Joule by providing to Joule all publicly available information pertinent to potential or actual Municipal Energy Program upon reasonable request.

(b) Authorizes Joule to act on behalf of the Municipality to secure release of other data applicable to potential or actual Municipal Energy Programs held by others, including but not limited to residential and small commercial customer account and load information under the authority granted by the PSC CCA Order. Municipality further agrees to furnish Joule such information, to execute and deliver such additional documents, and to take such other actions as may

be reasonably necessary for Joule to secure release of such data.

2.7 Except to the extent provided in Section 2.2, nothing herein shall be construed to require the Municipality to approve an ESA with a Competitive Supplier.

2.8 Municipality shall comply with all Applicable Laws.

ARTICLE 3. RIGHTS AND RESPONSIBILITIES OF JOULE

3.1 Joule shall perform each of the following activities as part of the Municipal Energy Services:

(a) Provide Municipality with information concerning the benefits and desirability of implementing a CCA Program and other Municipal Energy Programs at public meetings, work sessions, phone calls and otherwise.

(b) Provide marketing services for a potential CCA Program.

3.2 Upon the occurrence of the events described in Section 2.2, Joule shall:

(a) Support the Municipality and attend board and public meetings.

(b) Provide to the PSC, the Distribution Utility and parties to the PSC CCA Order, requested information and documentation of the actions undertaken by the Municipality in connection with the Program, and otherwise coordinate efforts with such entities.

(c) Provide marketing services for the CCA Program.

(d) Manage a competitive procurement process for the CCA Program (the “**Solicitation**”) in a manner consistent with New York General Municipal Law including, without limitation:

i. Prepare bid specifications and procurement of competitive bids;

ii. Review responses to competitive bids to determine if they are Compliant Bids; and

iii. Assist with contract negotiations with the selected Competitive Supplier.

(e) In the event there is a Compliant Bid, prepare program notification letters to opt-out customers, and supervision of all other notices and publications required under the PSC CCA Order to facilitate the adoption and operation of the Program.

(f) In the event there is a Compliant Bid, prepare a program implementation plan and a data protection plan in accordance with the PSC CCA Order.

(g) Subject to the approval of the Municipality, Joule may develop proposals for potential offers of opt-in distributed energy resources (DER) products and services to Participating Customers, including opportunities to participate in local renewable energy projects, shared solar, energy efficiency, demand response, energy management, and other innovative Reforming the Energy Vision (REV) initiatives and objectives designed to optimize system benefits, target and address load pockets/profile within the CCA, and reduce costs for Participating Customers; and

(h) Fulfill any other responsibilities that reasonably relate to administering the CCA Program.

3.3 Joule shall give prompt notice to Municipality if Joule becomes aware of any breach of this Agreement or any agreement relating to this Agreement.

3.4 Joule shall comply with all Applicable Laws.

ARTICLE 4. ROLE OF PROGRAM ORGANIZER FOR CCA PROGRAM

4.1 Joule shall have the right to propose a local Program Organizer to Municipality in connection with the CCA Program or otherwise. Upon the consent of Municipality, which shall not be unreasonably withheld, conditioned or delayed, Joule may assign or delegate certain or all of its CCA Program Administrator tasks to the Program Organizer, and may share a portion or all of the CCA Administrative Fee as described in Section 5.1 with the Program Organizer. Joule shall be solely responsible for any fees or payments due for services provided by the Program Organizer.

ARTICLE 5. PAYMENT.

5.1 Upon commencement of an ESA, Municipality agrees that Joule will be paid by the selected electricity supplier per kWh (volumetrically) for electricity purchased for all Participating Customers during the duration of the ESA a fee of \$0.0008/kWh (8/100^{ths} of one cent/kWh) per ESA contract year, or another fee agreeable to both Parties (the “**CCA Administrative Fee**”).

5.2 It is understood and agreed that as part of the Municipal Energy Services in connection with a potential CCA Program, the Distribution Utility may require a payment for records related to electricity usage of potential Participating Customers. Upon enactment of CCA Enabling Legislation, Joule is authorized to pay the Distribution Utility up to \$0.07 (7 cents) per record; for which Municipality shall not be liable, provided that Joule may seek reimbursement of such payment from the Competitive Supplier as part of an ESA (apart from the CCA Administrative Fee).

5.3 No portion of the CCA Administrative Fee shall be paid by Municipality.

ARTICLE 6. TERM AND TERMINATION

6.1 This Agreement shall commence on the Effective Date and, except as provided herein, it shall expire as follows:

(a) If no ESA is executed as contemplated by Section 2.3, eighteen (18) months from the Effective Date;

(b) If one or more ESA is or are executed as contemplated by Section 2.3, the termination or expiration of the ESA that expires latest.

6.2 Termination for Cause. This Agreement may be terminated for cause by either Party (the “**Non-breaching Party**”) upon a material breach of the other Party (the “**Breaching Party**”) if such Breaching Party has failed to cure such material breach within thirty (30) days of receiving notice of such breach from the Non-breaching Party.

6.3 In the event of any termination or expiration of this Agreement:

(a) Joule shall deliver to Municipality copies of all files and documents pertaining to any CCA Program;

(b) Except as expressly provided herein, all obligations of the Parties hereto pursuant to this Agreement shall terminate.

ARTICLE 7. INSURANCE AND INDEMNIFICATION

7.1 Upon Joule becoming a CCA Program Administrator as described in Section 2.2 and for the balance of the term of the Agreement, Joule shall secure and maintain, at its own expense, errors and omissions insurance in an amount not less than one million dollars (\$1,000,000.00) per claim/annual aggregate to protect itself and Municipality from any claim arising out of the performance of professional services and caused by negligent acts or omissions for which the Joule may be legally responsible, with a deductible not to exceed \$50,000 without prior written approval.

7.2 In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, Joule shall indemnify, defend and hold harmless the Municipality and the Municipality's elected officials, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising directly from or in connection with a claim by a third-party (i.e. a person other than the Indemnified Parties) arising out of (i) any material breach of this Agreement by Joule (including its obligations, covenants, representations or warranties) and not resulting from the actions (or omissions where there is a duty to act) of the Municipality or its elected officials, officers, employees or agents; or (ii) any action or omission taken or made by Joule in connection with Joule's performance of this Agreement, which action or omission is found in a final judgment by a court of competent jurisdiction or by arbitration to constitute Joule's gross negligence or willful misconduct, and excepting from both (i) and (ii) claims resulting from the actions (or omissions where there is a duty to act) of the Municipality or its respective elected officials, officers, employees or agents.

ARTICLE 8. CONFIDENTIAL INFORMATION.

8.1 During the Term, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") information about its business affairs, products/services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 8.1 by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party or its representatives prior to being disclosed by or on behalf of the Disclosing Party as demonstrated by written records; (iv) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information as demonstrated by written records; or (v) is required to be disclosed pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (the "**Order**"), provided that in such event the Receiving Party shall give the Disclosing Party prompt written notice of the Order and shall reasonably cooperate with the Disclosing Party prior to disclosure to provide the Disclosing Party with the opportunity, at Disclosing Party's expense, to interpose any and all objections it may have to disclosure of the

information required by the Order, or to otherwise limit any disclosure required by the Order to the maximum extent permitted by law and all information disclosed shall otherwise remain Confidential Information until another exception exists described in this Section 8.1. The Receiving Party shall: (A) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any third party, except to the Receiving Party's representatives, or approved subcontractors, who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement, and who are under confidentiality obligations at least as protective as this Agreement. The Receiving Party shall be responsible for any breach of this Section 8.1 caused by any of its representatives or subcontractors. In the event that a request is known to have been made by anyone seeking a court order disclosing any Confidential Information, the Receiving Party will provide (if permitted by the court order) the Disclosing Party with at least fifteen (15) days Notice identifying the information sought to be disclosed, the name, address and telephone number of the third party seeking disclosure, the reason for the requested disclosure, the case style, case number and court having jurisdiction over the action, if any, in which disclosure is sought, and will provide copies of the request for disclosure.

8.2 The Parties agree that any Confidential Information disclosed by Disclosing Party shall only be disclosed to those officials, employees, representatives, and agents of the Receiving Party that have a need to know in order to administer the Agreement.

8.3 Compliance by the Municipality with the New York State Freedom of Information Law ("NY FOIL") shall not be a violation of this Article and Municipality shall have no duty to litigate or defend any action against it under the NY FOIL.

8.4 Ownership of Personally Identifiable Data. All personally-identifiable data, developed or obtained under this Agreement ("**PI Data**") relating to Participating Customers, other than the Joule's Confidential Information, will be and shall remain the sole property of the Municipality. Joule shall promptly deliver all such PI Data to the Municipality at the Municipality's request; provided that Joule may retain a copy of the such PI Data for its archival purposes.

8.5 The obligations under this Article 8 shall survive the termination or expiration of this Agreement for two (2) years.

ARTICLE 9. MISCELLANEOUS

9.1 Relationship of the Parties. The Parties acknowledge and agree that Joule is an independent contractor and is not an agent or employee of Municipality. Nothing in this Agreement shall be construed to create a relationship between Joule and Municipality of a partnership, association, or joint venture.

9.2 Joule covenants that the individuals engaged by Joule in any capacity, including but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. Joule represents and covenants that it has completed the I-9 verification process for all persons who perform services for Municipality.

9.3 Assignment. Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.

9.4 Entire Agreement/Amendment. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the Parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the Parties. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by the Parties.

9.5 Governing Law/Venue. Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the Parties, or of any of the Parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of New York without regard to conflict of laws principles, in any court of competent jurisdiction in the county in which the Municipality is located.

9.6 Severability. If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

9.7 Section Headings. Section headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date and the year first above written.

Company:
Doule Assets Inc.

THE CITY/TOWN/VILLAGE OF _____,

By:
Name: Mike Gordon
Title: Chief Executive Order

By:
Name:
Title: