

# Request for Proposals

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United Power, Inc.

May 2, 2022

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## Introduction

United Power, Inc. (“United” or “Cooperative”) is a not-for-profit electric distribution cooperative. United is headquartered in Brighton, Colorado, serving approximately 100,000 residential, commercial, and industrial meters with an annual peak of approaching 600 MW and retail energy loads totaling approximately 3,000 GWh annually. United is not a borrower from the Rural Utilities Service, nor regulated by the Colorado Public Utilities Commission or the Federal Energy Regulatory Commission. Thus, United will not be required to obtain approval or consent from governmental authorities to enter into the transactions contemplated by this Request for Proposals (“RFP”). Rather, United’s Board of Directors is responsible for determining the Cooperative’s rates and for approving the transactions contemplated by this RFP under Colorado law and the Cooperative’s governing documents. United has been powering the lives of its members since 1938 with the mission to energize and to serve its communities. Surrounding Denver on three sides, United Power’s service territory encompasses 900 square miles along the north central range of the Colorado Rockies. United’s service territory wraps around the north and west borders of the Denver International Airport, and includes the north metropolitan development corridors, including Interstate 25, Interstate 76, State Highway 85, and E-470. As a result of its geographic location, United’s system has experienced significant demand and energy growth averaging approximately 6% per year. Due to this significant demand and energy growth and as a means to implement its strategic power supply plan, United is investigating new power supply options and relationships to provide reliable, low-cost, more environmentally friendly energy to its members.

United is currently a member of Tri-State Generation and Transmission Association, Inc. (“TSGT”) and purchases bundled wholesale electric and transmission service pursuant to a Wholesale Electric Service Agreement (“Wholesale Agreement”) with a term extending through December 31, 2050. Under the Wholesale Agreement, TSGT provides all of United’s requirements for electric capacity and energy with the exception of a 5% load release.

Because of increasing competition in the electric industry, above market TSGT power costs, consumer preferences for cleaner energy, technological advances, disparate growth rates among TSGT’s members, and changes in law and regulation, United has provided TSGT with its unconditional notice to withdraw from membership in TSGT, effective May 1, 2024. Through the issuance of this RFP, United is soliciting proposals for wholesale power supply with the explicit understanding that United's acceptance of any proposal is conditioned upon the following which include, but are not limited to, the early termination of its Wholesale Agreement, satisfying its contractual or bylaw obligations required by TSGT, obtaining network transmission service, obtaining financing the proceeds of which will be used to pay to TSGT any early termination payment, and approval of each component of the overall transaction by United’s Board of Directors.

United is issuing this RFP for wholesale electric supply to serve retail load within its assigned service territory for terms of not less than 2 years and up to 20 years in length for a range of power supply options including, Full Requirements, Standard Industry Products, such as blocks of power with varying or staggered purchase amounts, and direct off-take supply agreements from asset-based options, such as renewable resources. In order to maximize the benefits of available market opportunities for its members, United is open to Innovative Energy Solutions that may be a combination or portfolio of power supply products and off-take supply agreements. These wholesale power supply strategies combined with distributed energy resources (“DERs”), demand-side management and energy efficiency programs, will provide United the opportunity to meet its member electric needs and for member engagement opportunities. Pertinent information will be distributed to all parties who have executed and delivered a Mutual Confidentiality and Non-Disclosure Agreement (“NDA”) with United.

In addition to products for wholesale electric supply, United is soliciting proposals from Respondents or their partners, associated third-parties or affiliates to provide, syndicate, arrange, securitize, place, or underwrite all or a portion of proceeds which will be utilized by United to make a payment to TSGT at the closing of United’s withdrawal from TSGT and the early termination of the Wholesale Agreement. The financing may be secured by United’s assets and revenues. Currently, the National Rural Utilities Cooperative Finance Corporation (“CFC”) has provided United with loans with outstanding principal in the amount greater than \$300,000,000. The CFC loans are secured by a senior first priority lien on United’s assets. The size of the underwriting is expected to range from approximately \$150 million to \$350 million. For purposes of this RFP, the underwriting range is provided so that United may evaluate Proposals and is not reflective in any way of United’s position in any ongoing legal or regulatory action. United will also consider structures for funding of the early termination payment whereby such costs are embedded in wholesale power costs. Respondents are requested to provide a detailed description of the transaction structure proposed as well as specific terms and conditions of any underwriting proposal, including but not limited to interest rate, annual principal and interest payments, tenor, financial coverage ratios, negative covenants, financial performance metrics, security required, servicing and administrative fees, and United’s financial presentation of such financial structure under generally accepted accounting principles. Respondents should specify in their underwriting proposal whether the costs associated therewith are embedded in wholesale power costs and if so, the cost increment associated with the funding. United will provide a comprehensive financial package after a Respondent has executed and delivered an NDA and has confirmed its interest in submitting a proposal to underwrite all or a portion of a payment that may be required for United to affect an early termination of the Wholesale Agreement (see [Exhibit A for Respondent Registration](#) and [Exhibit B for Mutual Non-Disclosure Agreement](#)). United anticipates that only Respondents providing Proposals for all or substantially all of United’s requirements will submit underwriting proposals; provided, however, United will accept and evaluate any underwriting proposal submitted by a Respondent.

On behalf of United, EnerVision, Inc. (“EnerVision”) is issuing this RFP to solicit power supply and/or financial proposals from Respondents for a significant portion of the Cooperative’s projected needs for electric capacity and energy (“Proposals”) and for underwriting the early termination payment. EnerVision is an independent consulting services firm, based in Atlanta, GA, which has been engaged by United to administer the RFP process on its behalf. The RFP will be conducted in two parts with the intent to provide a fair, transparent, and open process for Respondents to offer their Proposals for consideration. Part One will focus on screening and identifying Proposals or combination of Proposals that meet the requirements of the RFP, and that are likely to provide the highest value to United. Part Two will enable United and the Respondents short-listed from Part One to interact on a bilateral basis to revise and refine their Proposals as necessary to the point of establishing a firm power supply option. The conclusion of Part Two of the RFP process may result in United negotiating and documenting one or more Power Purchase Agreements (“PPAs”). United recognizes the cost and time involved in responding to an RFP of this magnitude and is grateful for the effort and the commitment of resources by each of the Respondents.

### Cooperative Buyer

United exists to serve its members and is mandated by its respective governing documents and mission statement to provide safe, reliable, low-cost service to its members. United believes it is in the best interest of its members to conduct the competitive process defined in this RFP in order to meet the growing needs of its members in a cost-effective manner. Wholesale power supply costs are the single largest expense incurred by United and represent approximately 75% of Cooperative’s total annual operating costs. United anticipates that the results of this RFP, if culminated into one or more PPAs, will have a material positive impact on the retail rates of United, and therefore, the costs incurred by its members and communities where they reside.

### United Power, Inc., Brighton, CO

- United serves over 100,000-member accounts across (see [Exhibit D Map of United Power’s Territory](#)).
- United’s annual peak is near 600 MW.
- United maintains and operates over 6,500 miles of distribution lines.
- United’s annual sales approximate 3,000 GWh.

### Power Supply and Load Requirements Forecast

Pertinent information, including system energy history and forecasts, will be distributed to all Respondents who have registered, executed and delivered an NDA with United (See [Exhibit A for Respondent Registration](#) and [Exhibit B for Mutual Non-Disclosure Agreement](#)). If a Respondent does not complete an NDA with United prior to the deadline for the [Non-Disclosure Agreements Due Date](#), then such proposal submitted by a Respondent will be rejected. United

forecasts its energy requirements using a regression analysis based on a mix of historical data, hourly load shapes, weather patterns and member account data. As with any forecast many factors, both known and unknown, will ultimately influence United's actual energy requirements. Respondents should use their own knowledge and expertise when using United's energy forecasts and recognize the inherent uncertainties and variability associated with such forecasts. Existing renewable energy resource data, historical load, and load forecast data will be provided upon execution and delivery of the NDA. In the event of an update to forecasts or other assumptions, Respondents will be given the opportunity to revise their Proposals.

United is using this RFP process to drive its planning decisions similar to an Integrated Resource Plan ("IRP"), but with no significant existing resources or desire to construct its own resources. United is relying upon market offers from physical generation in this RFP to determine the best plan to move forward upon its exit from membership in TSGT and the early termination of the Wholesale Agreement. United informally surveyed the market in 2020 and 2021 and has a strong belief the RFP will garner many diverse and robust Proposals. These Proposals will be analyzed in the same manner as an IRP with the expectation that the Responses to the RFP will provide more reliable cost estimates than United could develop on its own.

#### Applicable Laws and Regulations

United was originally incorporated as Union Rural Electric in 1938 and is organized under the laws of the State of Colorado as an electric cooperative. All Proposals must meet or exceed any relevant law applicable to United. Compliance with Colorado law, including HB19-1261, is essential for any successful Proposal. Specifically, Section 1 of HB19-1261 provides that Colorado has enacted statewide goals to reduce 2025 greenhouse gas emissions by at least 26%, 2030 greenhouse gas emissions by at least 50%, and 2050 greenhouse gas emissions by at least 90% of the levels of statewide greenhouse gas emissions that existed in 2005.

#### Transmission and Future RTO Participation

United is currently purchasing transmission from TSGT through its bundled rate and serves load in two Balancing Authorities ("BA"), Public Service Company of Colorado ("PSCO") and Western Area Power Administration, Colorado-Missouri Region ("WACM"). Proposals are to include all costs necessary to deliver power to United's delivery points, including, but not limited to, Network Service Integrated Transmission charges, Ancillary Service charges under Schedules 1, 2, 3, 4, 5, and 6, planning, scheduling, and settlement for the load, any applicable facilities or transmission study charges, applicable loss charges, distribution charges, and any other miscellaneous one-time or ongoing charges. Proposals should also include scenarios which assume that United will continue to purchase transmission service from TSGT for: (a) a transition period of up to ten (10) years; and (b) the term of the Proposal submitted by the Respondent.

United is seeking capacity and/or energy from physical resources that are registered or will be registered to participate in and supply capacity and energy into future Regional Transmission Organization (“RTO”) market(s). If a Respondent has physical resources that can provide capacity and/or energy in an advantageous manner to United, the Respondent should endeavor to communicate and describe such advantages in their proposals. Respondents intending to submit Proposals in response to this RFP are expected to review and follow developments for the upcoming formation of one or more RTOs that have the potential to be in United’s service territory. The development and planning for anticipated RTO development will be considered in any PPA executed with United.

### Request for Proposals

This RFP is designed to engage Respondents to offer competitive Proposals to supply all of United’s requirements for electric capacity, energy, ancillary services, and other energy services. For purposes of responding to this RFP, United is requesting Proposals include at least one of four different product categories described in the [Scope of Supply](#) section below. Respondents are encouraged to respond with Proposals that include any combination of the various products outlined in this RFP, in the event United chooses multiple products and Respondents. Through this RFP approach, United expects to be able to assess a broad range of potential alternatives and select the best option that satisfies its needs and requirements.

On a date determined by United, informational meetings will be conducted for those Respondents interested in providing Proposals. The primary purpose of these informational meetings is to afford interested parties the opportunity to ask questions and make suggestions regarding the electric supply and underwriting packages provided to United.

United reserves the right, in its sole judgment and discretion, to modify or cancel this RFP. In such event, United, via EnerVision, will provide notice of such action by sending e-mails to participants through the RFP e-mail, and make reasonable attempts to directly notify all participants who have filed a timely Respondents Registration Form of any such modifications or cancellation. United, and EnerVision, shall have no liability or responsibility for failing to make such direct notification to participants.

Respondents may continue to submit questions about the RFP to the RFP email address (“[United\\_Power\\_RFP@enervision-inc.com](mailto:United_Power_RFP@enervision-inc.com)”) any time prior to the deadline for submission of Respondents Registration Forms, but are encouraged to do so as far in advance as possible of the bidding deadlines, in order to allow United to have adequate time to respond to the questions.

The RFP will be managed in two primary stages, defined as “Part One” and “Part Two”.

Part One will be managed by United and EnerVision to screen, evaluate, and identify the top value Proposals within each product category that successfully address Part One pre-defined acceptance criteria and are likely to provide the desired value to United.

Part Two will be managed to engage Respondents short-listed in Part One to refine and revise their respective Proposals with the intended purpose of finalizing a definitive set of supply options that address United's Part Two acceptance criteria and are most likely to provide the desired value to United and its members.

### Evaluation Criteria

United intends to establish a power supply plan to create, protect, and enhance value for its members and will seek power supply options that achieve the following internal principles and Evaluation Criteria:

- Affordability – Continually seek fair and equitable wholesale rates with the ability of the selected supply plan to consistently achieve low costs compared to the combination of market costs.
- Competitiveness – Ability of the selected supply plan to result in a high likelihood of the Cooperative achieving a lower-than-average retail rate when compared with other Colorado based utilities.
  - Options for Aggressive Offers for Customer Choice Loads – Respondents should offer alternatives that facilitate competitive and creative processes for new customer choice loads.
- Economic Value – Ability of the selected supply plan to support United initiatives, products, programs, and rates that are desired by the United's members.
- Flexibility – Ability of the selected supply plan to access the lowest cost available supply, the ability to quickly adapt its power supply strategy based on changing market conditions and technology while at the same time maintaining control over supply decisions and options.
  - Demonstrate maximum agility and adaptiveness through forward-looking plans, versatile, innovative programs and business models, and diverse power supply options as United responds to changes in our environment as well as the needs of our members and community
  - Respondents should address increasing distributed technologies, anticipate emerging disruptive technologies, and facilitate changes during contractual transitions that promote mutual benefits.
  - Respondents should include a plan for (at a minimum) an annual collaborative meeting in which the resources changes/additions are discussed, and various options are evaluated.
  - Robustness – Ability of the supply plan to respond to changes in factors effecting power costs, such as impacts to energy markets, economy, and other energy environments.

- Reliability - Strive to deliver high-quality, uninterrupted service to our members through the design, operation, protection, and maintenance of a failure-resistant and resilient electric distribution system.
  - Seasonal and Economy Driven Load Swings – United may face significant swings in load that are typically predictable by season, and/or extended due to economic changes.
- Responsibility - Act honestly, ethically, sustainably, and in the best interest of our members and communities as we manage operations and secure resources.
- Renewable Power Generation – Anticipate and facilitate United adding renewable generation resources.
- Stability – Ability of the selected supply plan to achieve a stable, reliable, and predictable outcome in cost with minimal exposure to unacceptable risk or unplanned events.
- Transparency – Provide unbundled costs, capacity, energy, transmission, ancillary, A&G, and any other costs associated with the proposal.

## RFP Communications

RFP communications shall be managed by EnerVision on behalf of United according to this RFP.

- Address all RFP questions, correspondence, NDA, and Proposals to:
  - [United\\_Power\\_RFP@enervision-inc.com](mailto:United_Power_RFP@enervision-inc.com)
  - Carter Babbit, Vice President, Power Supply, EnerVision, Inc.
    - [carter.babbit@enervision-inc.com](mailto:carter.babbit@enervision-inc.com)
    - (678) 510-2917 Office
  - Ronnie Donaldson, Partner, EnerVision, Inc.
    - [ronnie.donaldson@enervision-inc.com](mailto:ronnie.donaldson@enervision-inc.com)
    - (678) 510-2916 Office

## RFP Part One

Part One of the RFP is open to Respondents to provide one or more Proposals for wholesale energy supply and/or underwriting of the early termination payment in accordance with the process described in this RFP. Respondents must submit Part One Proposals consistent with the instructions and timing included in this RFP. The intent of Part One is to screen and limit the number of Respondents and their respective Proposals to a subset of Respondents and Proposals that are most likely to meet the needs and requirements of the United as determined in its sole

discretion. United reserves the right to select a different set of Respondents and/or Proposals during the Part One process according to its respective needs and requirements.

United reserves the right to contact Respondents to clarify Proposal terms and/or request additional information. To that end, United may send written questions to any Respondent to clarify its Proposal and to help ensure that United understands the Proposal. A Respondent must provide answers to United in writing in a timely fashion with the intent to clarify and explain its Proposal as requested by United. The Respondent's answers to United's questions will be considered in the evaluation of its Proposal.

The intent of the scoring for Part One is to assist with United's decision on which combination of Respondents, Proposals, and products are most likely to meet the needs and requirements of United with the desired value and economic attractiveness. The outline of Part One [Evaluation Criteria](#) is set forth above.

In order to evaluate Proposals and products on a fair and equitable basis, a product-by-product evaluation will be performed tailored to the preferred tenor of the product proposed. In addition, to the product-by-product evaluation United will evaluate various combinations of products combined to create a power supply plan or power supply portfolio that meets United's requirements. United may decide to pursue one or multiple PPAs based on this evaluation.

United recognizes that not all Proposals or discrete products described therein will be directly comparable, and as such, United may apply reasonable adjustment factors to the technical and commercial evaluation of Proposals or discrete products, costs and/or risks not included with or accounted for in the Proposal or a particular product. United will use best judgment and good practices to apply cost adjustment factors in a fair and consistent manner. Examples of possible cost and risk adjustment factors that may be applied to Proposals and discrete products described therein include, but are not limited to, generation technology type, generation fuel type, generation location, environmental factors and costs, transmission and transmission congestion, financing, market pricing, fuel pricing, and economic factors.

Respondents short-listed from Part One will be notified and requested to confirm their continued interest in participating in the RFP process through Part Two. Respondents not selected from the Part One process will be notified and may be requested to hold their Proposal open for consideration should something change during Part Two of the RFP that results in a reconsideration of the Respondent's Proposal.

*Power Supply Information Requirements:*

- For each Proposal, at a minimum, please specify:
  - Quantity above United's self-supply – annual capacity/energy; expected pattern of energy delivery, and generation mix
  - Blocks of firm power

- Term – proposed commencement date and termination, including any potential extension period(s)
- Delivery points – specify point of delivery including all costs to deliver energy to United’s delivery points. Most recent usage data associated with each delivery point will be provided upon execution and delivery of the NDA
- Pricing:
  - Demand and/or energy charges
  - Indexes and/or price escalators upon which demand/fuel/other components are based
  - Any market-based or pass-through components of power supply
  - A full transmission plan (including unbundled costs) for delivery of all the energy provided under the proposal, including any anticipated transmission costs, not included in the pricing
  - Pricing to be based on market close on May 2, 2022
  - All commodity forecasts used in the pricing
  - Any planning, scheduling, and settlements for United’s entire load
- Any unit contingencies or assets backing the sale of capacity and/or energy
- Confirm the Proposal is compliant with HB19-1261
- Credit requirements/expectations of both parties

*Underwriting Early Termination Payment Information Requirements:*

- Apply an Estimated Exit/Early Termination Payment in each of the following amounts:
  - \$150 Million dollars
  - \$250 Million dollars
  - \$350 Million dollars
- Specify Terms and Conditions for Underwriting
  - Term
  - Rate
  - Restrictions such as negative or restrictive covenants
  - Financial performance criteria
  - Fees such as servicing, administrative, and commitment
- Specify whether the underwriting proposal is for a standalone underwriting or if the cost of the underwriting is embedded in the Respondent’s Power Supply Proposal
  - Specify whether financing contingent on acceptance of Power Supply Proposal
  - Indicate how the repayment of the underwritten amount will be structured
  - Specify and describe, along with the basis for such conclusion, the accounting presentation of the underwriting proposal on United’s financial statements

## RFP Part Two

Part Two of the RFP is available to Respondents that United has short-listed from Part One. Part Two will enable United and the short-listed Respondents to interact on a bilateral basis to revise and refine their Proposals as necessary to incorporate firm terms and conditions into an executable PPA. The conclusion of Part Two of the RFP process may result in United selecting and recommending one or more PPAs for approval by United's Board of Directors. United is not obligated, nor required to pursue any power supply option, PPA, or underwriting by way of issuing and processing this RFP.

At the beginning of Part Two, Respondents will be required to confirm their commitment and dedication to their continued engagement with United. United will engage with each of the Respondents in one or more informational meetings. The purpose of these meetings is for each Respondent to present its Proposal and to answer questions from United. Once the initial Respondent meetings have been completed, United will provide the Respondents with feedback on their respective Proposals. Following receipt of the feedback from United, Respondents will have an opportunity to revise, restructure, reprice and resubmit their Proposal, as needed, in response to the feedback. Once all revised Proposals have been received, United will make its selection by revising its Part One analysis for Part Two short-listing of the Respondents and Proposals selected for final negotiation. A non-quantifiable risk analysis is then completed on successful Proposals. Respondents providing variable pricing should be prepared to provide multiple scenarios which include low, mid-range, and high natural gas pricing. The analysis entails identifying risk factors and evaluating each based upon probability of occurrence and magnitude of impact. A Respondent not selected for the final contract negotiation process may be asked to hold its Proposal open if United subsequently determines to re-engage with the Respondent during the negotiation process. During the negotiation process, United and the selected Respondents will negotiate definitive PPAs.

## RFP Schedule

The RFP schedule is defined in the following table. Specific dates and timing may be adjusted from time to time to accommodate uncertainty and unplanned events which are a natural part of any RFP process. United recognizes the cost and time involved in responding to an RFP of this magnitude and is appreciative for the effort and resources each Respondent has devoted to its Proposal.

<b>Key Task or Activity</b>	<b>Planned and Estimated Date</b>
<b>Part One Processes</b>	
<b>Request for Proposals Release Date</b>	5/2/2022
<b>Start of Part One</b>	5/2/2022
<b>Deadline for Submission of Respondents Registration Forms</b>	5/16/2022
<b>Non-disclosure Agreements Due Date</b>	5/30/2022
<b>Questions from Respondents Due</b> (to be Discussed at Individual Informational Meetings)	6/13/2022
<b>Informational Meetings for those Respondents Interested in Providing Proposals</b>	End June / Early July
<b>Part One Proposals Due Date</b>	8/8/2022
<b>Part One Questions Provided to Respondents</b> (Clarifying Questions)	9/5/2022
<b>Part One Question Response from Respondents Due</b>	9/19/2022
<b>Selection and Notification of Part One Respondents for Part Two Negotiations Due Date</b>	11/14/2022

<b>Part Two Processes (Dates Subject to Change Based on Part One Results)</b>	
<b>Start of Part Two</b>	11/14/2022
<b>End of Question-and-Answer Meetings with Part Two Respondents</b>	12/5/2022
<b>Part Two Feedback to Respondents Due</b> (Improvements, Modifications to Part One)	1/5/2023
<b>Part Two Revised Proposals Due Date</b>	1/19/2023
<b>Part Two Question and Answer Period</b>	2/2/2023
<b>Selection of Final Part Two Respondents</b>	2/13/2023
<b>Completion of Bilateral Negotiations between United and Selected Respondents</b>	5/19/2023
<b>Final Selection and Award Due Date</b>	6/1/2023
<b>Begin Implementation Preparation</b>	6/2/2023
<b>Exit Tri-State and Start New Contract</b>	5/1/2024

## Scope of Supply

### Full Requirements

- Full Requirements Proposals shall include electric capacity, energy, ancillary services, and all other services required of United and operating in the current BAs or future RTOs. “Full Requirements” is defined as supplying 100% of the firm requirements to meet United’s hourly real-time load obligation.
- Full Requirements service shall be managed and supplied by a sole Respondent under a PPA.
- United will require the Respondent to incorporate existing renewable resources already supplying power to United into the PPA.
- Terms of 2 to 20 years are preferred.
- United will insist upon an exception and/or flexible contract option to its requirements obligation in the event the Cooperative pursues a new large load or other economic development program that may result in the addition of significant new energy requirements. United is seeking the option to supply retail energy to potential new large load additions, typically large commercial and industrial type loads, with technical and commercial terms that may be different than retail or commercial loads typically served under a Full Requirements PPA. In general, a new large load is a load that requires advanced planning and has specific requirements for power supply that are not typical in the normal course of system planning and operations. Respondents should prepare their respective Proposals in accordance with the load forecasts provided in the data package. Please note the load forecasts do not include any planned or known new large load additions.
- United requests that Respondents provide some level of flexibility to purchase, own, generate or operate renewable energy, dispersed energy resources, demand response programs, DERs and technologies. United’s desire to have the flexibility to implement and utilize DERs and programs without restrictions from its PPA(s). DERs and other demand reduction or energy efficiency programs as described herein are located on United’s distribution system between the wholesale points of delivery on United’s distribution system and United’s retail end-use demand, including behind the meter applications. United will also consider proposals from Respondents to optimize United’s DER resources as a part of an overall power supply strategy.
- Full Requirements Proposals shall be settled at the United delivery points.
- Under a Full Requirements Proposal, United desires to have the Respondent manage wholesale metering requirements.
- United expects to define in the underlying PPA a collaborative relationship and decision-making process between United and the Respondent whereby certain specified decisions

such as deployment of DERs and future resource planning opportunities are subject to the mutual agreement of the parties.

### Standard Industry Products

- Standard Industry Products are defined as firm capacity and energy supplied in increments for various load shapes, volumes, durations, and time periods.
- Standard capacity and energy products do not include day-to-day energy management services, ancillary services, or other services.
- United will acquire the necessary energy management services as needed to support a complete solution that may involve standard energy products or may combine standard energy products with a Proposal.
- United is seeking standard energy proposals for the following products:
  - Minimum quantity of 25 MWs.
  - Baseload, Firm, 24x7 Capacity and Energy in increments of 100 MWs.
  - Intermediate and Peaking, Firm, 7x16 and 5x16 Capacity and Energy in increments of 25 MWs.
  - Seasonal, monthly, and hourly-shaped, firm capacity and energy proposals will be considered.
  - Load following proposals based on a percentage slice-of-system requirement for capacity and energy will be considered.
- United prefers fixed or firm pricing but will consider flexible or index pricing structures.
- All Standard Industry Products shall be delivered and settled at the United's delivery points.

### Asset Based, Unit Contingent

- Asset Based, Unit Contingent proposals are for capacity, energy, and other products from a specified and defined generating facility.
- United will acquire the necessary energy management services as needed to support a complete energy solution involving Asset Based, Unit Contingent options or may combine such options with a partial requirement proposal.
- United does not contemplate participating as an owner or operator of any facility and is seeking proposals for direct offtake from generating facilities in the form of a PPA.
- Terms of 5 to 20 years are preferred, and longer terms may be considered.
- Delivery and settlement of the capacity and energy at United's delivery points is preferred.
- Proposals shall include descriptions of the facility, technical characteristics, operating characteristics, capacity capabilities, and energy production capabilities.

- Respondents are encouraged to provide any additional necessary information to support evaluation of project capability and viability such as:
  - Location of project
  - Description of project
  - Project schedule
  - Description of site control
  - Interconnection status
  - Status of environmental and project permitting
  - Project financing plan
  - Ownership structure
  - Description of major equipment
  - Description of Operations and Maintenance plan
- United prefers fixed or firm pricing but will consider flexible terms for pricing and volume to help manage risk and respond to changes in load requirements and market factors.

### Innovative Energy Solutions

- Innovative Energy Solutions proposals are open to the discretion of the Respondents and may include variations or combinations of the products previously listed.
- Respondents providing Innovative Energy Solution Proposals are requested to be specific regarding their proposals and shall endeavor to demonstrate how the proposed solution will benefit United and meet the requirements of this RFP.
- By providing this product category the Cooperative is expressing its willingness and intent to consider innovative capacity and energy solutions. However, because such solutions may be difficult to evaluate or analyze, United reserves the right to reject in its sole discretion any Innovative Energy Solution.

### Proposal Requirements

A Respondent's Proposal, including any underwriting proposal, shall include the following items noted with the appropriate heading as indicated below. If the Respondent is proposing as a team or joint venture, the Respondent is required to provide the same information for each member of the team or joint venture.

The submission should be organized in the order as described below.

1. Respondent Registration Form (see [Exhibit A](#))
2. Mutual Confidentiality and Non-disclosure Agreement (see [Exhibit B](#))
3. [Generation Information](#)
4. [Experience, Background, and Qualifications](#)
5. [Proposal\(s\)](#)

Proposals are to include all costs necessary to deliver firm power to United's respective delivery points, applicable transmission charges, ancillary service, planning, scheduling, and settlement for the load, any applicable facilities or transmission study charges, applicable loss charges, distribution charges not on United's system, and any other miscellaneous one-time or ongoing charges. If any costs, exceptions, or assumptions are not included in the proposed pricing then Respondents shall identify and specify them as such in the proposal.

### Respondent Registration

A Respondent interested in submitting a Proposal in response to this RFP shall register by providing the information listed in [Exhibit A](#) to the email address [United\\_Power\\_RFP@enervision-inc.com](mailto:United_Power_RFP@enervision-inc.com).

### Mutual Confidentiality and Non-disclosure Agreement

United proposes Respondents execute the NDA provided in [Exhibit B](#). EnerVision will manage communication and coordination between the Respondent and United to complete the NDA. All NDA communication should be sent to the email address: [United\\_Power\\_RFP@enervision-inc.com](mailto:United_Power_RFP@enervision-inc.com).

Once the NDA is completed, the Respondent will be provided with United's historic and forecasted energy requirements along with a financial information package for providing an underwriting proposal.

### General Information

Respondents are encouraged to provide a narrative response describing their respective Proposal and qualifications. This narrative response is an opportunity for the Respondent to describe and characterize its Proposal and qualifications in a manner that justifies the Respondent's response to United's principles, objectives, and [Evaluation Criteria](#) as defined in the RFP.

(NOTE: If the Respondent is submitting a proposal as an affiliate, team or joint venture with each entity signing the PPA, if awarded, each should provide this information. Sub-contractors are not eligible and should not be identified here).

- Respondent Name:
- Principal Address, City, State, and Zip Code:
- Telephone Number:
- Website:
- Year Established:
- Number of years in business under present name:
- Social Security Number or Federal Employer Identification Number:
- DUNS Number:

- Business Structure: Individual or Sole Proprietorship, Partnership, Limited Liability Company, etc.
- Three Years of Annual Revenue:
- Total Number of Employees:
- Total Number of Current Customers:
- Describe Other Lines of Business:
- List any Related or Affiliated Companies:
- Name of Contract Signatory and Title:
- Contact Information: Name, Number, Email, Address:
- Is the Respondent authorized and/or licensed to do business in Colorado?
- Where is the Respondent's corporate headquarters located?
- Bankruptcy Information: Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? If the answer is "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets. As part of this process, United may request further financial information from Respondents (or their parent organizations) and will consider confidentiality agreements with such Respondents (or their parent organizations) to protect such information, as appropriate.
- Previous Contracts: Has the Respondent within the last ten (10) years exercised an early termination of a power contract or had a counterparty exercise a right of early termination? If the answer is "Yes", state the name of the organization contracted with, services contracted, whether the counterparty or Respondent exercised the early termination right, date, type of contract (*i.e.*, full requirements, partial requirements, block purchase) and reason for the early termination.
- Has the Respondent been involved in any claim, arbitration, litigation, or regulatory enforcement action with any Federal, State or Local Government, during the last ten (10) years, with respect to power supply contracts? If so, please describe subject matter and outcome.

### Experience, Background, and Qualifications

Prepare and submit narrative and illustrative responses to address the items listed below. If the Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

- Describe the Proposal and how the Proposal satisfies the requirements, principles, objectives, and [Evaluation Criteria](#) provided by United in this RFP.
- Describe Respondent's experience relevant to the products included in its Proposal as specified by this RFP. List and describe relevant projects/clients of similar size and scope performed over the past 5 years.

- Describe Respondent’s specific experience with utility clients, especially electric cooperatives. If Respondent has provided services for United in the past, describe the product or services previously provided.
- List other resources, including total number of employees, and number and location of offices available to support the Respondent’s Proposal.
- If the Respondent is proposing as a team or joint venture or has included sub-contractors, describe the roles of each person/entity and the extent to which the team, joint venture and/or sub-contractors have worked together in the past.
- Identify and describe any additional information that may be helpful to United in their evaluation of the Proposal.

### Proposal(s)

The Respondent’s Proposal shall include a response to the [Proposal Requirements](#) as defined above, description of the product or products to be supplied, how the Respondent proposes to supply the product(s), and any unique problems or exceptions perceived by the Respondent. The Respondent is requested to respond to at least one product defined in the [Scope of Supply](#) section above in order to have a conforming Proposal. Providing a response to multiple product types may give the Respondent an opportunity to participate in different power supply options that may be selected by United. The Respondent should clearly indicate any resources, capabilities, or inputs will be needed from United to implement its Proposal.

United reserves the right to declare any Proposal as non-conforming if it does not meet the requirements specified in this RFP. Except for Proposals that are non-timely United may determine in its sole discretion to permit a Respondent three (3) business days after the proposal submission deadline and notice from United to remedy their non-conforming Proposal. United, however, reserves the right in its sole discretion to reject any Proposal that is non-conforming.

A form containing the required information for each product or Proposal is contained in [Exhibit C](#), Product Terms and Pricing Sheet. Respondents shall provide a Product Terms and Pricing sheet for each Proposal or product offered. The information contained in [Exhibit C](#) and described below constitutes the expected key commercial terms and conditions associated with the Proposals. Respondents are encouraged to add and include any additional terms or conditions to characterize and define their respective Proposals and pricing.

For each Proposal or Product, at a minimum, please specify:

- Product Type (as defined in the [Scope of Supply](#)).
  - Full Requirements
  - Standard Industry Products
  - Asset Based, Unit Contingent
  - Innovative Energy Solutions

- Description – Provide a description of the product being offered.
- Buyer – Specify the buyer of the product.
- Seller – Specify the seller of the product.
- Capacity – Provide the amount or description of the capacity of the supply. Respondent shall confirm the firm capacity eligible for United ‘s Planning Reserve Margin Requirement. If applicable, Respondents may submit tables or spreadsheets that include data relative to shaping or anticipated shaping of capacity supply.
  - Respondents offering Standard Industry Products may provide a reference to a spreadsheet or table to provide pricing for various capacity and energy amounts with varying terms.
- Energy – Provide the amount or description of the type and quantity of energy to be supplied by the Proposal. If applicable, Respondents may submit tables or spreadsheets that include data relative to shaping or anticipated shaping of energy supply.
  - Respondents offering Standard Industry Products may provide a reference to a spreadsheet or table to provide pricing for various capacity and energy amounts with varying terms.
- Shaping and Load Following – Provide a description of the type of capacity and energy supplied by the product and whether the energy is firm, includes any shaping, and/or load following. If applicable, Respondents may submit tables or spreadsheets that include data relative to shaping or anticipated shaping of supply.
- Other Products or Services – Provide a description of other products and services that are included with the proposed product.
- Effective Date – Specify the effective date required for the binding transaction.
  - United currently expects the Wholesale Agreement with TSGT to terminate as of June 1, 2024.
- Term – Provide the proposed commencement date and termination date, including any potential extension period(s).
- Base Date – Provide the base date of the Proposal or product that defines the date associated with the underlying assumptions used to offer the Proposal or product.
- Expiration Date – Provide the date when the Proposal is no longer valid or available without update or adjustment.
- Delivery Point – United prefers that energy is delivered to United’s delivery points and that pricing includes all costs to deliver energy of the load shape or block to United’s delivery points. United’s delivery points will be provided to the Respondent once the NDA is complete.
- Pricing – The Proposal pricing shall include a description of pricing and all applicable charges. Respondents should specify if any costs or charges are not included in the Proposal’s price.
  - Demand and/or energy charges

- Indexes and/or price escalators upon which demand/fuel/other components are based
- Any market-based or pass-through components of power supply
- Any anticipated transmission costs, not included in the pricing
- Pricing to be based on market close on date to be specified with the final RFP
- Any planning, scheduling, and settlements for United's entire load
- Respondents offering Standard Industry Products may provide a reference to a spreadsheet or table to provide pricing for various capacity and energy amounts with varying terms
- Payment Terms – Specify any payment terms applicable to the product or proposal.
- Unit Contingency – Respondent shall specify if the capacity or energy is contingent on a specific resource or set of resources. Respondents shall list and describe the relevant resources.
- Additional Information - Respondents are encouraged to include any additional information and specifications, such as an underwriting plan, which would assist in the evaluation of the proposal.
- Guarantees – Provide a description of any guarantees and assurances, such as financial and performance guarantees, which will be provided to United to support the supply of capacity and energy.
- Credit – Provide a description of the credit requirements of both parties. United may require any successful Respondent (or its parent organization) to post a form of credit support to ensure the Respondent's performance under the proposed transaction.
- Cooperative Requirements – Provide a description or specify any Cooperative requirements that are associated with the product or Proposal.
- Cooperative Costs and Risks – Provide a list of costs and risks that Respondent is requiring of the Cooperative and that is intended to be included in the PPA.
- Respondent Exceptions – Provide any known exceptions, exclusions, or assumptions included in the proposal that will need to be discussed or negotiated, that may result in a change to the proposed price or may need to be included in the PPA.
- Other – Provide any other information or data that may be relevant or important to support, validate, and qualify the Proposal.

### Multiple Proposals

United will accept multiple Proposals from Respondents. In the event a Respondent provides multiple Proposals, the Respondent must indicate whether the discrete Proposals are mutually exclusive.

## Proposal Submission

Proposals must be submitted via E-mail to: [United\\_Power\\_RFP@enervision-inc.com](mailto:United_Power_RFP@enervision-inc.com) no later than August 8, 2022 at 5:00 pm MST. No hard copies of Proposals will be accepted. Any Proposal or modification to a Proposal received after the due date shall not be considered and will be deemed non-responsive. Supplier will receive an email response confirming receipt of the proposal submittal.

RFP Submittal Email: [United\\_Power\\_RFP@enervision-inc.com](mailto:United_Power_RFP@enervision-inc.com)

## Cost of Proposal

Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, if any, or during any phase of the selection process, shall be borne solely by Respondent.

This RFP does not commit United to enter into a PPA, award any services related to this RFP, nor does the RFP obligate United to pay any costs incurred in preparation or submission of a Proposal or in anticipation of the execution of a PPA. To that end, each Respondent is solely responsible for all costs and expenses it incurs in connection with this RFP. Under no circumstances, including United's termination of this RFP at any time for any reason, whatsoever, will United, or any of its representatives be responsible for any costs or expenses of any Respondent incurred in connection with this RFP.

## Assessment of Criteria

EnerVision and United will conduct an evaluation of each Proposal received in response to this RFP. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria used in this analysis are described in the [Evaluation Criteria](#) section. United may select all, some, or none of the Respondents in its sole discretion. United may also request additional information from any Respondent at any time prior to final approval of a selected Respondent.

## Proprietary Information and Mutual Confidentiality and Non-Disclosure Agreement

A Mutual Confidentiality and Non-Disclosure Agreement (see [Exhibit B](#)) should be executed and delivered by the Respondent to United.

United and its consultants will treat all Proposals submitted by Respondents as confidential. As RFP Administrator, EnerVision's business model provides an established infrastructure of independent energy management practices that supports the verification of, and compliance with, applicable processes, policies, and procedures. Each team member is bound by an internal non-disclosure agreement that strictly prohibits sharing Confidential Information outside this RFP

process. Failure to abide by the terms of the internal non-disclosure agreement can result in disciplinary action, up to and including termination. EnerVision takes its obligations regarding the maintenance of Confidential Information very seriously and will handle all Confidential Information with the highest professional regard.

United and its consultants are not restricted from using or disclosing any data that is already obtainable from another public source, without restriction.

#### Award of Contract and Reservation of Rights

United reserves the right to award one, more than one, and/or no PPA(s) in response to this RFP, in its sole discretion.

A PPA, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is determined to be the most advantageous to United, as determined by United in its sole discretion.

United may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of United. However, final selection of a Respondent is subject to United's evaluation and selection process.

United reserves the right to accept one or more Proposals or reject any or all Proposals received in response to this RFP in its sole discretion, and to waive informalities and irregularities in the Proposals received. United also reserves the right to terminate this RFP in its sole discretion, and reissue a subsequent solicitation, and/or remedy technical errors in this RFP.

United will require the selected Respondent(s) to execute a PPA. The PPA is contingent until executed by the authorized representative of United and approved by United's Board of Directors. In the event the parties cannot negotiate and execute a PPA within the time specified, United reserves the right to terminate negotiations with the selected Respondent and commence negotiations with any other Respondent.

Furthermore, United, at any time, in its sole discretion may suspend the RFP in whole or in part.

- END OF RFP -

## Exhibits

### **Exhibit A – Respondents Registration Form**

Respondents interesting and intending to respond to this Request for Proposal shall send the following information via email to this address: “[United Power RFP@enervision-inc.com](mailto:United_Power_RFP@enervision-inc.com)”

Submission of this information by a Respondent formally registers the Respondent per the process defined in this RFP. The Respondent will receive a registration confirmation email to confirm its information was received.

Respondents that register through this process will receive email notices with updates on the RFP. All RFP communications from United to the Respondent will be provided through the information provided with the registration.

Respondents can update their registration information by sending an email with the updates to “[United Power RFP@enervision-inc.com](mailto:United_Power_RFP@enervision-inc.com)”. Respondents can provide a primary and secondary contact.

- Respondent’s Name:
- Respondent’s Location and Address:
- Respondent’s Contact Name:
- Respondent’s Contact Email:
- Respondent’s Contact Phone Number:
- Respondent’s Authorized Representative Name and Title:

**Exhibit B – Mutual Confidentiality and Non-Disclosure Agreement (NDA)**

The following document is a mutual non-disclosure agreement that shall be executed between the Respondent and United. The Respondent shall execute two NDA's and return one executed copy to United.

## MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality and Non-Disclosure Agreement (this “Agreement”) is entered into by and between \_\_\_\_\_, a \_\_\_\_\_ (“Company”), and United Power Inc., a Colorado non-profit cooperative corporation (“Cooperative”), as of \_\_\_\_\_, 2022 (“Agreement Date”). The Company and the Cooperative are each referred to herein as a “Party” and together as the “Parties.” A Party disclosing Confidential Information (as defined below) is sometimes referred to herein as “Discloser” and a Party receiving Evaluation Material is sometimes referred to herein as “Recipient.”

### **I. Introduction and Background.**

The Cooperative is a currently a member of Tri-State Generation and Transmission Association, Inc. (“Tri-State”) and purchases bundled wholesale electric and transmission service pursuant to a Wholesale Electric Service Agreement (“Wholesale Agreement”) with a term extending through December 31, 2050. Under the Wholesale Agreement, Tri-State currently provides substantially all of Cooperative’s requirements for electric capacity and energy. The Cooperative also purchases bundled transmission service from Tri-State under the terms of the Wholesale Agreement.

The Cooperative has provided Tri-State with notice of its intent to withdraw from membership in Tri-State effective May 1, 2024. Through the issuance of its request for proposal, the Cooperative is soliciting proposals for wholesale power supply to serve retail load within its assigned service and is also soliciting proposals for the provision, syndication, arrangement, securitization, placement or underwriting of all or a portion of a proceeds which will be utilized by the Cooperative to make a payment to Tri-State at the closing of the Cooperative’s withdrawal from Tri-State which includes any payment required to effect an early termination of the Wholesale Agreement (the “Proposed Transaction”).

### **II. Defined Terms and Confidentiality Obligation.**

For purposes of this Agreement, “Representatives” means a Party’s parent companies, Affiliates (as herein defined), and its and their respective directors, officers, employees (permanent or contract), agents or representatives, including, without limitation, its and their respective attorneys, accountants, consultants, bankers, and financial advisors. “Affiliates” of a Party shall mean any company or legal entity which respectively (a) controls, either directly or indirectly, the Party; or (b) is controlled by a company or entity which directly or indirectly controls the Party;

or (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls the Party. "Control" means the right to exercise fifty percent (50%) or more of the voting rights in the appointment of the directors (or other managers having duties similar to those of directors) of such company. The term "person" shall be broadly interpreted to include, without limitation, any individual, corporation, company, group, partnership, association, limited liability company, business trust, joint stock company, trust, cooperative, unincorporated organization, joint venture, or other entity.

As used herein: (a) "**Evaluation Material**" refers to any information furnished or communicated to the Recipient by or on behalf of the Discloser in connection with the Potential Transaction (whether prepared or communicated by the Discloser, its Representatives or otherwise), including the "Confidential Information", (b) "**Confidential Information**" means all information the Discloser revealed, directly or indirectly, to the Recipient in connection with the Potential Transaction, regardless of the form in which it appears, or under which it is communicated, all copies or recordings thereof (whether or not made in accordance with this Agreement) and the content of such information, including, but not limited to, all descriptions, economic data, computer programs (not including source code) and models and results thereof, (c) "**Trade Secrets**" means any and all items that constitute trade secrets under applicable law, including, without limitation, the software, technology, know how, confidential business information, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans and product plans of the disclosing Party or its Affiliates, and (d) "**Internal Evaluation Material**" refers to all memoranda, notes, and other documents and analyses developed by the Recipient using any of the information specified under the definition of Evaluation Material.

The Recipient acknowledges that the Evaluation Material includes sensitive, proprietary Confidential Information and Trade Secrets, and agrees that such Evaluation Material shall be kept strictly confidential; *provided, however* that (i) the Recipient may make any disclosure of such Confidential Information to which the Discloser gives its prior written consent, and (ii) any of the Confidential Information may be disclosed to Recipient, its Affiliates, and their respective Representatives who need to know the Evaluation Material solely for the purpose of evaluating any possible participation in the Proposed Transaction (it being understood that such Representatives shall be informed by Recipient of the confidential nature of such information and shall be directed by the Recipient to treat such information in accordance with the terms of this Agreement). The Recipient shall be responsible for any breach of this Agreement that results from the actions or omissions of its Representatives and shall indemnify and hold the Discloser and its respective Representatives harmless from and against any and all liabilities, claims, causes of action, costs and expenses (including attorney fees and expenses) arising out of the breach of this

Agreement by the Recipient or its Representatives.

The Recipient agrees that the Evaluation Material shall not be sold, traded, published, or otherwise disclosed by the Recipient to anyone in any manner whatsoever, except as may be expressly provided for herein. The Recipient shall not use the Evaluation Material for any purpose, without the consent of the Discloser, other than in connection with the evaluation of the Proposed Transaction. Without the Discloser's prior written consent, the Recipient shall not, and will direct the Recipient's Representatives not to, disclose to any person (except as otherwise expressly permitted herein) the fact that the Evaluation Material has been made available, that discussions or negotiations are taking place between the Discloser and the Recipient.

The Recipient shall be permitted to disclose the Evaluation Material in the event and to the extent that it is required by law or regulation or requested by any governmental agency or other regulatory authority (including any self-regulatory organization having or claiming to have jurisdiction) or in connection with any legal proceedings, provided that the Recipient request confidential treatment of the Evaluation Material to the extent permitted by law. The Recipient shall notify the Discloser as soon as practicable in the event of any such disclosure (other than at the request of a self-regulatory authority), unless such notification shall be prohibited by applicable law or legal process. In the event that the Recipient or anyone to whom it transmits the Evaluation Material pursuant to this Agreement becomes legally compelled to disclose any of the Evaluation Material, the Recipient shall provide the Discloser with written notice of such event promptly upon the Recipient obtaining knowledge thereof (provided that the Recipient is not otherwise prohibited by law from giving such notice) so that the Discloser may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Recipient shall furnish only that portion of the Evaluation Material that is legally required and shall disclose the Evaluation Material in a manner reasonably designed to preserve its confidential nature.

The Recipient shall have no confidentiality obligation hereunder with respect to any Evaluation Material to the extent that such information (i) is or becomes generally available to the public other than as a result of a disclosure by the Recipient in violation of this Agreement, or (ii) was within the Recipient's possession prior to its being furnished pursuant hereto or is or becomes available to the Recipient on a non-confidential basis from a source other than the Discloser or its Representatives, *provided* that the source of such information was not known by the Recipient to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Discloser or any other party with respect to such information.

In the event that the Recipient of the Evaluation Material decides not to participate in the Proposed Transaction, such Recipient shall as soon as practicable return all Evaluation Material (other than Internal Evaluation Material) to the Discloser or represent in writing to the Lead Arranger that the Recipient has destroyed all copies of the Evaluation Material (other than Internal Evaluation Material) unless prohibited from doing so by the Recipient's internal policies and procedures, in which case, the Evaluation Material shall remain subject to and shall be treated by Recipient as Confidential Information in accordance with this Agreement.

### **III. Information.**

The Recipient acknowledges and agrees that (i) the Evaluation Material is provided to the Recipient for informational purposes only, (ii) no representation or warranty regarding the Evaluation Material is made by the Discloser, (iii) Recipient does not acquire any intellectual property rights or any other property rights in the Evaluation Material under this Agreement except the limited rights necessary to consider a Potential Transaction and (iv) the Discloser shall have no obligation to update or supplement any Evaluation Material or otherwise provide additional information.

The Evaluation Material has been prepared to assist the Recipient in making its own evaluation of the Proposed Transaction and does not purport to be all-inclusive or to contain all of the information that a Party may consider material or desirable in making its decision to participate in the Proposed Transaction. The Recipient should take such steps as it deems necessary to assure that it has the information it considers material or desirable in making its decision to participate in the Proposed Transaction and should perform its own independent investigation and analysis of the transactions contemplated thereby. The Recipient represents that it is sophisticated and experienced in engaging in transactions similar to the Proposed Transaction. The Evaluation Material and other information and data contained herein and provided herewith are not a substitute for the Recipient's independent evaluation and analysis to participate in the Proposed Transaction.

The Evaluation Material may include certain forward-looking statements and projections provided by the Cooperative. Any such statements and projections reflect various estimates and assumptions by the Cooperative concerning anticipated results. Neither the Cooperative nor any of its Affiliates makes any representation or warranty as to the accuracy of any such forward-looking statements or projections. Whether or not any such forward-looking statements or projections are in fact achieved will depend upon future events some of which are not within the control of the Cooperative. Accordingly, actual results may vary from the projected results and

such variations may be material.

#### **IV. General.**

A. Injunctive Relief. Recipient agrees that money damages would not be a sufficient remedy for breach of this Agreement. In the event of any breach or threatened breach by the Recipient of the terms hereof, the Discloser shall be entitled to seek all remedies available in law or in equity, including injunction or specific performance, without proof of actual damages and without the requirement to post a bond, and Recipient shall not plead in defense thereto that there would be an adequate remedy at law. Such remedy shall be cumulative and in addition to all other remedies available. The Parties acknowledge that the Evaluation Materials are unique and that disclosure in breach of this Agreement may result in irreparable injury to the Discloser.

B. Entire Agreement; No Partnership. This Agreement contains the entire agreement between the Parties concerning the subject matter hereof, and no modifications of this letter agreement or waiver of the terms and conditions hereof will be binding upon either Party, unless approved in writing by each Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or between any Party and the other Party's Affiliates or members or to impose any partnership obligation or liability upon either Party or their respective Affiliates or members.

C. Assignment. This Agreement will be binding on the Parties and their respective successors and assigns and will inure to the benefit of the Parties hereto and their respective successors and assigns.

D. Amendments. All amendments and supplements to this Agreement must be made in writing and signed by a duly authorized representative of each Party.

E. Severability; No Waiver. If any provision of this Agreement is not enforceable in whole or in part, the remaining provisions of this Agreement will not be affected thereby. No failure or delay by a Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise by a Party preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this Agreement.

F. Governing Law; Venue. This Agreement will be governed by, and will be construed and enforced under, the laws of the State of Colorado as they are applied to agreements entered into and to be performed entirely within such State. The Parties agree that any action arising out of this Agreement will be brought in the state or federal courts located in the State of Colorado, irrevocably submit to the exclusive jurisdiction of any such court and waive any



I. Counterparts; Electronic Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures depicted by facsimile or by scanned computer image file (such as .pdf and .gif) shall be valid and binding.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the Agreement Date by their respective officers thereunto duly authorized.

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

**UNITED POWER, INC.**

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

Name: Mark A. Gabriel

Title: Chief Executive Officer

**Exhibit C - Product Terms and Pricing Sheet**

<b>Term</b>	<b>Response</b>
Product Type	
Description	
Buyer	
Seller	
Capacity	
Energy	
Shaping	
Other Products and Services	
Effective Date	
Duration	
Base Date	
Expiration Date	
Delivery Point	
Price	
Payment Terms	
Unit Contingency	
Guarantees	
Credit	
Buyer Requirements	
Buyer Costs and Risks	
Respondent Exceptions	
Other	

## Exhibit D – Map of United Power’s Territory

