
ELECTRIC SERVICE AGREEMENT

BETWEEN

CONSTELLATION NEWENERGY, INC.

AND

CITY OF BOSTON
on Behalf of the Customers of
Boston Community Choice Electricity Program

WHEREAS, the Massachusetts Legislature has adopted Chapter 164 of the Electric Utility Restructuring Act of 1997, (“Restructuring Act”), which, *inter alia*, (1) allows for competition in the generation and supply of electricity to consumers, (2) authorizes municipalities to aggregate the electrical load of electricity consumers within their boundaries, and (3) allows municipal aggregators to formulate an aggregation plan and conduct aggregation programs;

WHEREAS, the City of Boston (“City”) has developed the Boston Community Choice Electricity Program (“Program”) to aggregate the electrical load of electricity consumers within the City and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the City has received approval of its Program from the Massachusetts Department of Public Utilities (“DPU”) in D.P.U. 19-65;

WHEREAS, [Constellation NewEnergy, Inc, is a corporation formed in the State of Delaware and duly authorized to conduct business in the Commonwealth of Massachusetts, and desires to provide All-Requirements Power Supply to consumers located within the City and the administrative support necessary for the Program, pursuant to the terms and conditions of the City’s Program and this Electric Service Agreement (“ESA”) (hereinafter “Supplier”);

WHEREAS, the City desires that the Supplier provide All-Requirements Power Supply as an alternative to Basic Service for consumers within the City; and

NOW THEREFORE, IT IS AGREED THAT, the City and the Supplier hereby enter into this ESA subject to the terms and conditions below.

ARTICLE 1 DEFINITIONS

Terms that are capitalized or are in bold type that are used but not defined in the body of this ESA, including the Exhibits hereto, shall be defined as set forth in this Article 1. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

All-Requirements Power Supply – The service under which the Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, Renewable Energy Obligations, and other such services or products, including but not limited to any additional Renewable Energy Certificates, as specified in the Price and Term Appendix, necessary to provide firm power supply to Participating Consumers at the Point of Delivery.

Bankruptcy – With respect to a Party, such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and, such proceeding is not dismissed within forty-five (45) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within forty-five (45) days after the appointment, or, within forty-five (45) days after the expiration of any such stay, has not been vacated, *provided that*, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

Basic Service – As defined in M.G.L. c. 164, § 1 and in orders of the DPU, as amended or promulgated, as the case may be, from time to time.

Business Day – A 24-hour period ending at 5:00 p.m. EPT, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Boston, Massachusetts are authorized by law or other governmental action to close.

Change in Law – As used herein, means any of the following:

- a) if, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any Governmental Authority with competent jurisdiction, including without limitation any amendment, modification or change in construction or interpretation of the Local Distributor's tariffs, (i) it becomes unlawful for a Party to perform any obligation under this ESA, or (ii) any Supplier or municipal aggregator or other similar license, certification or franchise status or requirements are imposed or altered in any material respect;
- b) if, (i) any regulatory agency or court having competent jurisdiction over this ESA or the Program requires a change or addition to the terms of this ESA or the Program rules or protocols that adversely affects a Party in any material respect, or (ii) any regulatory or court action affects a Party's ability to perform under this ESA in any material respect;
- c) if, any ad valorem, property, occupation, severance, transmission, distribution, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, or transaction taxes or any other governmental taxes, charges, licenses, fees or assessments (other than such charges based on net income or net worth), or increases in such charges, or an application of such charges to a new or different class of parties, is levied or enacted, and thereafter becomes effective after the Effective Date of this ESA, that is applicable to the Supplier of its performance under this ESA; or
- d) if any new or additional charges, fees, and/or obligations are imposed on the Supplier or its customers by any Governmental Authority or Local Distributor, or there are any other changes by any Governmental Authority or Local Distributor to retail electric customer supply access or municipal aggregation programs in a manner which increases the cost of performance by the Supplier under this ESA.
- e) if any new or additional charges, fees, and/or obligations, including without limitation transmission or capacity requirements or charges, are imposed on the Supplier or its customers by ISO-NE related to a FERC-approved change to ISO-NE's Tariff or Market Rule 1 issued after the Effective Date in a manner which increases the cost of performance by the Supplier under this ESA.

Commercially Reasonable – Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations.

Consultant Commission Fee – The amount per kWh as set forth in any Price and Term Appendix.

CPG – Colonial Power Group, Inc., the consultant hired by the City to develop, implement, and administer the Program, or any successor consultant retained by the City.

Credit Rating – With respect to the Supplier (or Supplier’s Credit Support Provider, as the case may be) or other entity, on any date of determination, (1) the ratings assigned by Moody’s, S&P and/or the other specified rating agency or agencies to such applicable entity’s unsecured, senior, long-term debt not supported by third party credit enhancement, or (2) if the applicable entity does not have such a rating, then the rating assigned to such entity by Moody’s and/or S&P as its corporate credit rating or issuer rating, or (3) if the applicable entity is a financial institution, its unsecured, unsubordinated, long-term deposits by Moody’s, S&P and/or the other specified rating agency or agencies. In the event of an inconsistency in ratings by the rating agencies (a “split rating”), the lowest rating assigned shall control.

Credit Support Amount – The dollar amount of credit support set out in the Price and Term Appendix, which the City has determined in its sole discretion as an amount approximating its total potential future exposure to the Supplier as of the Effective Date.

Delivery Term – The period for which prices for All-Requirements Power Supply have been established, as set forth in any Price and Term Appendix.

DPU – The Massachusetts Department of Public Utilities or any successor state agency.

EDI – Electronic Data Interchange: The exchange of business data in a standardized format between business computer systems.

Effective Date – The date on which this ESA is executed by the Parties (to be determined by the later date, if the Parties execute on different dates).

Eligible Consumers – Residential, commercial, industrial, municipal, or other consumers of electricity who receive Basic Service from the Local Distributor’s distribution or transmission system, at one or more locations within the geographic boundaries of the City as of the Effective Date of this ESA. Eligible Consumers includes (1) consumers who have Basic Service and have indicated that they do not want their contact information shared with Supplier for marketing purposes; and (2) consumers receiving Basic Service plus an optional Green Power product that allows concurrent enrollment in either Basic Service or competitive supply. Eligible Consumers excludes (a) consumers who have Basic Service and have asked their Local Distributor to not enroll them in service with any competitive supplier; (b) consumers receiving Basic Service and enrolled in a Green Power product that prohibits switching to Supplier; and (c) consumers receiving competitive supply service.

ESA – This Electric Service Agreement including without limitation, the appendices hereto, which are incorporated by reference, and any amendments made thereto hereafter.

Event of Default – shall have the meaning specified in Article 4.4.

Force Majeure – Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics;

landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the City may not be asserted as an event of Force Majeure by the City; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of Force Majeure.

Forward Contract – shall have the meaning in 11 U.S.C. §101(25).

Forward Contract Merchant – shall have the meaning in 11 U.S.C. 101(26).

General Communications – The type of communications described and defined in Article 5.6 herein.

Governmental Authority – Any national, state or local government, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the City.

Governmental Rule – Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

Green Power – RECs certifying electric energy generated by equipment or facilities including solar power, biomass, landfill gas, wind turbine, hydro power or other renewable energy generating resource or technology, as may be defined by M.G.L. c. 25A, § 11F, § 11F1/2, or M.G.L. c. 164, § 1, and rules or regulations promulgated thereunder or, that may be otherwise added and incorporated into Products as a voluntary REC purchase defined in each Price and Term Appendix.

ICAP Tag Value – A consumer account's contribution to peak load, expressed in kW-month, as determined by the Local Distributor pursuant to the ISO New England Manual for the Forward Capacity Market.

ISO-NE – ISO New England, Inc., the New England Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New England and the bulk transmission of electricity throughout the New England power grid.

kWh, kW – Kilowatt-hour and kilowatts, respectively.

Large Industrial – A consumer account with either of the following: (i) an ICAP Tag Value assigned by the Local Distributor of 300kW or higher, or (ii) projected usage of more than 1,500,000 kWh/year.

Letter of Credit – An irrevocable, non-transferable, standby letter of credit, issued by a Qualified Institution utilizing a form substantively like the standard form set out in Appendix F to this ESA. All costs relating to any Letter of Credit shall be for the account of the Supplier. The

value of the Letter of Credit shall be the 100% of the face value of such Letter of Credit unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the value of the Letter of Credit shall be zero (0).

Letter of Credit Default – With respect to an outstanding Letter of Credit, the occurrence of any of the following events (a) the issuer of such Letter of Credit shall fail to be a Qualified Institution (as defined below); (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (c) the issuer of the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or (d) the Letter of Credit shall expire or terminate or have a value of zero at any time the Supplier is required to provide a Letter of Credit to the City pursuant to Article 15.2 below and the Supplier has not transferred a replacement Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned to the Supplier in accordance with the terms of this ESA.

Local Distributor – NSTAR Electric Company (d/b/a Eversource Energy), the local distribution utility, or any successor company(ies) or entity(ies) providing electricity distribution services in the City.

Low-Income Consumers – Residential Program Consumers who are designated by the Local Distributor to a low-income tariff (Example: Rate Class code “R-2”) in any specific utility billing period or cycle.

Moody’s – Moody's Investors Service, its successors and assigns.

NEPOOL – The New England Power Pool.

New Consumers – Residential, commercial, industrial, municipal, or other consumers of electricity that become Eligible Consumers after the Effective Date.

New Taxes – Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the City, to be effective after the Effective Date with respect to All-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.

Participating Consumers – Eligible Consumers enrolled in the Program.

Parties – The City and Supplier, as the context requires. In the singular, “Party” shall refer to any one of the preceding.

Plan – Boston’s Community Choice Electricity Program as adopted or amended by the City from time to time, and as approved by the DPU on July 22, 2020, in D.P.U. 19-65, or amendments as approved from time to time. The Plan is a plan developed by the City to aggregate electricity consumers for the primary purpose of negotiating the best rates for the supply of electricity for such consumers.

Point of Delivery – The point of interconnection between NEPOOL Pool Transmission Facilities and the transmission facilities of the Local Distributor.

Point of Sale – The electric meter for each Participating Consumer’s account, as designated by the Local Distributor.

Potential Event of Default – Any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

Price and Term Appendix – The Price and Term Appendix substantially in the form of Appendix A hereto, which is then in effect and which sets forth the Prices and Terms for the provision of All Requirements Power Supply for customers in each Rate Class.

Product – A unique All Requirements Power Supply option offered to Eligible Consumers at a specific price and containing a specific quantity and type of Green Power, if any, unique from other Products.

Program – Boston’s Community Choice Electricity Program, under which, the Plan is described and implemented.

Qualified Institution – A major U.S. commercial bank or trust company, a foreign bank with a U.S. branch office, in any case, organized under the laws of the United States or a political subdivision thereof having assets of at least \$10 billion and credit ratings of at least “A3” from Moody’s and “A-” from S&P, provided that any bank used by the City for its normal business shall qualify as a Qualified Institution for the purpose of this ESA.

Rate Class – Customer groupings consistent with definitions created by the Local Distributor and recognized by the DPU.

Related Documents – The executed Form CM-10, the City’s standard terms and conditions, Form CM-11, the executed Price and Term Appendix, and other documents required by the City and executed by Supplier.

Renewable Energy Certificates (“RECs”) – An instrument that identifies the relevant generation attributes of each MWh produced by a renewable generation unit. Such certificates will include, but not be limited to, certificates produced by the NEPOOL Generation Information System.

Renewable Energy Obligations – The total of all renewable energy commitments to Participating Consumers under this ESA including all Renewable Energy Standards obligations and any additional Green Power (limited to RECs purchases) included in optional Products as set out in any Price and Term Appendix.

Renewable Energy Standard(s) – Collectively, the Clean Energy Standard, the Renewable Energy Portfolio Standard, the Alternative Renewable Energy Portfolio Standard, and the Clean Peak Energy Standard, as may be defined by M.G.L. c. 21N, §§ 3(c), 3(d) and 7 (the Global Warming Solutions Act), or M.G.L. c. 25A, § 11F, § 11F1/2 (Renewable Energy Portfolio Standard and Alternative Renewable Energy Portfolio Standard), or M.G.L. c. 25A, § 17 (Clean Peak Energy Standard), or M.G.L. c. 164, § 1, or related rule or regulation.

Retail Price(s) – The rate(s) set forth in a Price and Term Appendix that the Supplier will charge to Participating Consumers for each Product.

S&P – Standard & Poor's Rating Group, its successors and assigns.

Service Commencement Date – The Participating Consumers' first meter read dates for the month of November 2021, or as soon as necessary arrangements can be made with the Local Distributor thereafter.

SMART Incentive Agreement – Any agreement between the City and a solar project developer under which the solar project developer pays SMART Incentive Payments on behalf of Low-Income Consumers who are Participating Customers.

SMART Incentive Payments – Solar Massachusetts Renewable Target program incentive payments for the benefit of Low-Income Consumers who are Participating Customers.

Supplier's Credit Support Provider – Exelon Generation Company, LLC, a Pennsylvania limited liability company.

Supplier's Credit Support Amount – The sum of the Supplier's Eligible Parent Guarantee Amount and the Letter(s) of Credit issued to the City to support the Supplier's obligations under this ESA.

Supplier's Eligible Parent Guarantee Amount –The lesser of (1) the specified maximum amount of a guarantee provided by Supplier's Credit Support Provider and (2) the amount set forth below opposite the lowest Credit Rating for Supplier's Credit Support Provider on any date; and provided, further, the Supplier's Eligible Parent Guarantee Amount shall be zero if on any date, (i) Supplier or Supplier's Credit Support Provider (if Supplier has provided a guarantee) does not have a Credit Rating from S&P or Moody's, (ii) an Event of Default or Potential Event of Default with respect to Supplier or Supplier's Credit Support Provider has occurred and is continuing or (iii) the guarantee, if any, provided by Supplier fails to be in full force and effect unless Supplier is relying on its own Credit Rating to establish Supplier's Eligible Parent Guarantee Amount pursuant to the table below.

<u>Supplier's Eligible Parent Guarantee Amount</u>	<u>Moody's Credit Rating</u>	<u>S&P Credit Rating</u>
\$15,000,000	Ba1 or above	BB+ or above
\$0	Ba2 or below	BB or below

If the Supplier or Supplier's Credit Support Provider has tangible net worth of less than \$500 million, then the Supplier's Eligible Parent Guarantee Amount shall be \$0.

Supplier's Letter of Credit Requirement – means for Supplier shall equal the Credit Support Amount *minus* the Supplier's Eligible Parent Guarantee Amount, and if such value is negative, shall equal zero.

Term – As defined in Article 4.1.

ARTICLE 2 RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply, using this Electric Service Agreement, to Participating Consumers pursuant to the terms of the Program and this ESA. For the avoidance of doubt, Supplier shall be authorized to supply All-Requirements Power Supply only to Participating Consumers, and the Local Distributor will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Basic Service, until changes in law, regulation or policy may allow otherwise. Supplier further recognizes that this ESA does not guarantee that any individual Eligible Consumer will be served by the Supplier. Notwithstanding any provision of this Electric Service Agreement, if a new customer class is added to the Program to the extent such class does not include customers currently served under the program, the City shall be permitted to enter into a separate agreement to provide power supply and other services to such customer class either with (i) Supplier or (ii) an alternate supplier under its own Load Asset.

The City authorizes the Supplier on behalf of the City and any Participating Consumers to take any and all actions as the Supplier determines may be necessary to permit switching and enrollment in accordance with DPU regulations, the Supplier's and the Local Distributor's rules and terms hereof. The City further authorizes the Supplier to remove any Participating Consumer from the Program if, in the Supplier's sole discretion, such Participating Consumer breaches the terms of this ESA including without limitation any terms or conditions of a Price and Term Appendix.

In accordance with Article 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out. In the event the geographic boundaries of the City change during the term of this ESA, Supplier shall only be obligated to supply All-Requirements Service to those Participating Consumers located within the City as such boundaries existed on the Effective Date of this ESA.

The City shall specifically authorize the Local Distributor to provide, and Supplier shall have the right to obtain and utilize as required, all billing, energy and other consumption information for Participating Consumers as is reasonably available from the Local Distributor or which is necessary for the Supplier to perform its obligations under this ESA. Supplier shall request consumption data for individual Participating Consumers from the Local Distributor via EDI. If further action is required by the Local Distributor or the Supplier to authorize Supplier to receive such consumption and billing data, the City agrees to use Commercially Reasonable efforts, at Supplier's cost, to assist Supplier, if so requested by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Supplier in obtaining permission from such Eligible Consumers and/or the DPU, where necessary as a prerequisite to the provision of such information. Supplier shall not be responsible for any errors that Supplier makes in the provision of All-Requirements Power Supply to the extent such errors are caused by errors or omissions in the information provided to it by the Local Distributor or the City.

In addition, to the extent the City is permitted by the DPU to receive information regarding other Local Distributor customers, including but not limited to New Consumers, the City shall authorize the Local Distributor to provide, and the Supplier shall have the right to obtain and use such information as is reasonably available from the Local Distributor to support City-directed marketing and outreach activities subject to the provisions of Section 2.5.

This Contract is a Forward Contract.

2.2 NO THIRD-PARTY BENEFICIARIES/AGENCY RELATIONSHIP

This ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties except as otherwise set forth under the ESA. This ESA facilitates rights under M.G.L. c. 164 for Eligible Consumers to purchase electricity from the Supplier in accordance with the Plan and this ESA. The City has the right, but not the obligation, to advocate on behalf of the Eligible Consumers interested in contracting for electric supply and on behalf of all Participating Consumers, unless otherwise prevented by law.

The City is authorized to act on behalf of the Eligible Consumers in contracting for electric supply for such Eligible Consumers and is authorized to act as agent for all Participating Consumers. The City and Supplier agree and understand that Participating Consumers shall be principals under this ESA and shall have privity of contract with Supplier; *provided, however*, that in any litigation arising under this ESA, only the City, as agent for the Participating Consumers, has the right to bring claims against the Supplier.

2.3 COMPLIANCE WITH LAWS

By entering into this ESA, the parties specifically represent that they have exercised due diligence to review and have fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission (FERC), the DPU, Massachusetts Attorney General (AG), and the Massachusetts Department of Energy Resources (DOER) and any other Governmental Authorities having jurisdiction over any element of the transactions contemplated by this ESA.

2.4 CONDITIONS PRECEDENT

The City's obligations under this ESA shall be conditioned upon the Supplier fulfilling the following requirements:

- a) maintain Supplier's license from the DPU (as such term is defined in the Local Distributor's Terms and Conditions for Suppliers);
- b) execute a Competitive Electric Supplier Service Agreement with the Local Distributor in a form reasonably satisfactory to Supplier;
- c) execute any appropriate ISO-NE applications and agreements;
- d) obtain authorization from FERC to sell power at market-based rates;
- e) complete EDI testing with Local Distributor; and
- f) provide all other documentation required by the Local Distributor.

If Supplier has not fulfilled all such requirements by the Service Commencement Date, the City may terminate this ESA without any liability to the City.

2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Supplier acknowledges that the City shall have exclusive ownership of all right, title, and interest in and to all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Supplier as a result of execution of this ESA. Supplier shall use Eligible Consumer data solely to provide All-Requirements Power Supply to Participating Consumers and to render other services required or permitted under this ESA. Any other use of Eligible Consumer data without the prior written consent of the City is strictly prohibited. For the avoidance of doubt, Supplier shall not directly or indirectly use Eligible Consumer data for any marketing purpose other than at the direction of the City. Pursuant to such authorized use, Supplier may share such Eligible Consumer data with affiliates and third-party vendors as reasonably necessary to accommodate Supplier's provision of All-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables), provided that Supplier will take reasonable measures to inform any such vendor of the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA. Supplier shall provide to the City, at the City's request, Eligible Consumer data in the format requested by the City. Except as in connection with the performance of this ESA or the taking of actions permitted by this ESA, Supplier shall not disclose any Eligible Consumer data to any third-party and Supplier shall take Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of All-Requirements Power Supply or other services under this ESA requires that Supplier have access to or make use of any Eligible Consumer data, Supplier shall treat such Eligible Consumer data as confidential information. Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in this Article 2.5 and in Article 18.2. At the end of this ESA, Supplier shall provide a copy of the Eligible Consumer data in an electronic format which is generally usable, as it then exists, to the City and at the City's written direction, to other parties. A material violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

The Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send DPU-approved educational materials, opt-out notices or other communications essential to the operation of the Program. Such lists may not be used by the Supplier to market any additional products or services to Eligible Consumers or Participating Consumers.

ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

3.1 CONSUMER CHOICE

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to M.G.L. c. 164, § 134 and the Program, to change their source of electricity supply, as set forth in Article 2.1. The Parties represent and warrant to each other that they shall not obstruct the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of the DPU, the Local Distributor and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Notwithstanding the foregoing, however, the Parties may take Commercially Reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS

The Supplier will conduct opt-out mailings to New Consumers on a quarterly basis (unless otherwise agreed to by the City) and in the timeframe necessary as directed by the City or CPG. Consistent with the requirements of any applicable Governmental Rules, CPG, or the City will request and obtain from the Local Distributor and provide to Supplier New Consumer's account number, service and billing address, and other pertinent contact information; Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Supplier will be providing All-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the M.G.L. c. 164, § 134, the Plan, and the Program ("Opt-Out Notice"). CPG or the City will prepare and provide to Supplier the Opt-Out Notice in form and content as approved by the DPU ("Approved Opt-Out Notice"), and the Supplier shall mail only such Approved Opt-Out Notice to each such New Consumer prior to the date of automatic enrollment and in a timeframe as directed by the City or CPG and in compliance with DPU directives. The Approved Opt-Out Notice shall: (i) prominently state all charges to be assessed by the Supplier; (ii) provide a summary of the prices and terms of service included in the applicable Price and Term Appendix as well as fully disclose the prices and terms then being offered for Basic Service by the Local Distributor; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Basic Service from the Local Distributor; (iv) state how a Participating Consumer may voluntarily opt-up or opt-down to other Products offered under the Program; and (v) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Basic Service or choose a new Supplier without paying a fee or penalty to Supplier. If directed by the City, the Supplier will conduct an opt-out mailing in a timeframe necessary for service to begin for New Consumers on the Service Commencement Date. The City agrees to take such further actions as the Supplier may reasonably request in connection with the Supplier's performance under this Article 3.2.

The Supplier is responsible for all costs associated with consumer notification to New Consumers under this Article 3.2. Such costs include, but are not limited to, print materials, printing, copying, mailing, postage, and language translation services. Supplier shall reimburse

the City or CPG for any documented costs incurred related to or in support of such activities. The Supplier will maintain a complete list of opt-outs throughout the life of the contract whether received prior to the initial enrollment or after accounts have been enrolled. Upon request, the Supplier will make this opt-out list available to the City or CPG.

In providing the notifications set forth in this Article 3.2, and in otherwise conducting the activities in Article 3.4 below, the City and the Supplier must rely upon information provided to it by the City, CPG or their agent or consultant for the purpose of performing its obligations. Supplier will not be responsible for any errors or omissions in connection with its notification of Eligible Consumers resulting from errors or omissions in the information provided to it by the City, CPG or their agent or consultant. For clarification purposes, all mailing lists (initial and subsequent) to receive notices pursuant to this Section 3.2 shall be requested by the City, CPG or their agent or consultant from the Local Distributor and shared with Supplier. The City, CPG and their agent and/or consultant acknowledge that the Supplier shall not be responsible for requesting mail listings directly from the Local Distributor.

3.3 CONSUMER AWARENESS

Prior to the initial enrollment of any consumer accounts on the Service Commencement Date, CPG or the City will provide to Supplier the account number, service and billing address, and other pertinent contact information of Participating Consumers. Supplier shall notify such Participating Consumers that Supplier will be providing All-Requirements Power Supply as of the Service Commencement Date, and the Retail Price(s) and Program Products pursuant to the applicable Price and Term Appendix of this ESA. CPG or the City will prepare and provide to Supplier the form and content of the notice and Supplier shall mail only such notice to each Participating Consumer in a timeframe as directed by the City or CPG. The Supplier is responsible for all costs associated with such consumer notification including, but not limited to, print materials, printing, copying, mailing, postage, and language translation services.

Upon mutual agreement by all Parties concerning the content and method, either the Supplier or CPG may conduct consumer awareness efforts at its sole expense. Any such efforts must be consistent with the Education and Information Plan included in the DPU-approved Plan.

Supplier shall be responsible for costs associated with City-directed consumer awareness efforts that may be detailed and explicitly delegated to Supplier in any Request for Proposals for competitive electric supply services issued in connection with this ESA (“Program Promotions”). Such Program Promotions may include website enhancements, print advertisements, paid social media, consumer outreach, and the preparation and delivery of educational materials that are separate and apart from other consumer notification mailings required pursuant to this ESA. The City may request Supplier to print and mail City-prepared Program Promotions materials to Participating Consumers, Eligible Consumers, or electricity consumers of the City, provided, however, any such efforts shall not occur more than once in any given calendar year during the term of this ESA. The total costs for all Program Promotions shall not exceed \$80,000 in any given calendar year. Further, the City may adjust the Retail Rate to allow either the City or CPG to recoup costs incurred by either party for City-directed consumer awareness efforts, in which case the City will direct Supplier to collect and remit such reimbursements to the City or CPG as appropriate.

3.4 ENROLLMENT

3.4.1 Participating Consumers – CPG or the City shall provide Supplier with the list of Participating Consumers, as well as such Participating Consumers’ service and billing addresses, and any other information necessary and in sufficient time for Supplier to commence All-Requirements Power Supply as of the Service Commencement Date. All Participating Consumers will continue to be enrolled in the Program under the terms of this ESA unless they opt-out in accordance with the Plan, this ESA and the Governmental Rules.

3.4.2 New Consumers - If New Consumers elect not to opt-out of the Program as provided in Article 3.2, such New Consumers will be automatically enrolled by Supplier in the Program as an Eligible Customer. Supplier shall enroll such New Consumers in accordance with applicable Local Distributor rules.

3.4.3 Eligible Consumers Opting Out - At any time during this ESA, Eligible Consumers who have previously opted out of the Program, with the exception of Large Industrial Eligible Consumers, may request that they be re-enrolled in the Program. Supplier will provide All-Requirements Power Supply to such Eligible Consumers at the Retail Price applicable for the Product selected. Large Industrial Eligible Consumers who have previously opted out of the Program may request to be enrolled in the Program, and Supplier may provide All-Requirements Power Supply to such Large Industrial Eligible Consumers solely at Supplier’s discretion, at the Retail Price applicable for the Product selected or at the then current market rate. Besides accurately and promptly transmitting information provided by such Participating Consumers to the Local Distributor and following any procedural or other steps which may be mutually agreed to, the Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Local Distributor for initial enrollment in the aggregation and all enrollments thereafter.

3.4.4 Eligible Consumers Served by Third Parties - Eligible Consumers being served under other competitive supply programs offered by third parties will not be automatically enrolled as Participating Consumers under this ESA when such program terminates or is otherwise completed. Supplier agrees that Eligible Consumers under such third-party competitive supply programs, with the exception of Large Industrial consumers, may affirmatively opt-in and receive All-Requirements Power Supply at the Retail Price applicable for the Product selected. Large Industrial consumers who are being served under such third-party competitive supply programs may request to be enrolled in the Program, and Supplier may provide All-Requirements Power Supply to such Large Industrial consumers at Supplier’s sole discretion at the then market rate.

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 TERM

This ESA shall commence on the Effective Date, *provided, however*, that Supplier’s obligation to provide All-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers’ first meter read dates for the month

of [MONTH], unless terminated earlier under Article 4.2 below (“Term”); provided, however, the Supplier will only begin service to Participating Consumers after such Participating Consumer has been enrolled by the Supplier and the Participating Consumer has been switched by the Local Distributor to the Supplier in accordance with all Governmental Rules. It may take up to two billing cycles for the enrollment with the Supplier to take effect. The Supplier is not responsible for any failure or delay in enrolling any Participating Consumer. The City shall provide such cooperation, assistance, documents, authorizations, instruments and other information as reasonably requested by the Supplier to permit the enrollment and servicing of Participating Consumers in the Program, including without limitation, designating the Supplier as the Supplier’s and/or the Participating Consumers’ attorney-in-fact for all purposes hereunder.

4.2 TERMINATION

This ESA may be terminated at any time upon written notice:

- a) by the City, or the Supplier, if either Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9, but excluding the failure to provide or arrange for All-Requirements Power Supply, which is addressed in Article 4.2(d)), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the City, if the Supplier becomes bankrupt or fails to provide and maintain Supplier’s Letter of Credit Requirement or Supplier’s Parent Guarantee Amount throughout the term of this ESA and continuing until the date set out in Section 3 of the Price and Term Appendix; or
- c) by the City, or the Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if the DPU exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- d) by the City in the event of (i) the failure of the Supplier to provide All-Requirements Power Supply to Participating Consumers, in the absence of Force Majeure, or (ii) the Supplier’s failure to perform within ten (10) days following written notice by the City and opportunity to cure; provided, however, that the City shall not be permitted to terminate this ESA if the Supplier’s failure to provide or arrange All-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Local Distributor, the City, the ISO-NE, or a Governmental Authority; or
- e) by the Supplier if the City becomes bankrupt or fails to maintain the Minimum Balance or make Monthly Distributions as required under section 5.4.2 provided that Supplier has first fully exercised its remedies under Section 5.4.2(f).

4.3 OBLIGATIONS UPON TERMINATION

Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the ESA. The Supplier shall cooperate in good faith as directed by the City to transition Participating

Consumers to a new competitive supplier or back to the Local Distributor. Upon the effective date of termination of the ESA, all rights and privileges granted to, and obligations imposed on, the Supplier shall cease, with the exception of the right to collect all monies due for services rendered, including any outstanding Distribution payments. It may take up to two billing cycles to transfer Participating Consumers to a new competitive supplier or the Local Distributor and the Supplier is entitled to all payment for All-Requirements Power Supply provided whether before or after the date of termination.

4.4 EVENT OF DEFAULT AND SPECIFIC PERFORMANCE

Notwithstanding any other provision herein, the Parties agree that it will be an Event of Default if a Party (i) fails to comply with any material provision of, or obligation under, this ESA; (ii) in the case of Supplier, violates any obligation to provide and maintain Supplier's Credit Support Amount in an amount equal to or greater than the Credit Support Amount; (iii) seeks to modify, suspend or terminate the Program during the Term; (iv) seeks to terminate this ESA except as expressly authorized in Article 4.2 or otherwise breaches or fails to perform any provision of this ESA, or (v) in the case of the City, fails to maintain the Minimum Balance or make Monthly Distributions as required in accordance with Section 5.4.2 provided that Supplier has first fully exercised its remedies under Section 5.4.2(f). Upon an Event of Default, the non-defaulting Party shall be entitled to specific performance of this ESA. The Parties acknowledge and agree that monetary damages would be inadequate to compensate the non-defaulting Parties, and that there is no other remedy at law adequate to compensate non-defaulting Party for the defaulting Party's actions as described in (i), (ii), (iii) (iv) and/or (v), and further agree that non-defaulting Party will suffer irreparable harm if a Party takes any of the actions described in (i), (ii), (iii), (iv), or (v) herein.

4.5 EXTENSION

The ESA may be extended beyond the termination date established in Article 4.1 by mutual, written agreement of the Parties, provided however, any new pricing terms shall be negotiated and the Parties shall amend this ESA to include an updated Appendix A. Upon any such extension of this ESA, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by either Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

ARTICLE 5 CONTINUING COVENANTS

The Supplier agrees and covenants to perform each of the following obligations during the term of this ESA (see Appendix B to this ESA for further details regarding Supplier responsibilities and requirements).

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Supplier shall exercise reasonable care to employ an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver a supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies in all material respects with all relevant industry standards and practices for the supply of electricity to

Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Supplier and employs Commercially Reasonable skills, systems and methods available to it.

5.2 CUSTOMER SERVICE ACCESS

The Supplier shall provide, or cause to be provided, certain customer services to Participating Consumers. Such services shall be reasonably accessible to all Participating Consumers, shall allow Participating Consumers to transact business they may have with the Supplier, and shall serve as a communications liaison among the Supplier, the City, and the Local Distributor. A toll-free telephone number shall be, on or before the Effective Date, established by Supplier and be available for Participating Consumers to contact Supplier not later than 8:00AM and continuing at least until 6:00PM Eastern Prevailing Time, Monday through Saturday, excluding federal holidays to resolve concerns, answer questions and transact business with respect to the service received from Supplier. Supplier's call center should provide an extensive selection of interpreter service typically accommodated by large call center vendors. At a minimum, Supplier's call center should be equipped to translate into the 27 languages on the City's language access document, as approved by the DPU. The City will post program-related information on the City's website which will be available to Participating Consumers for general information, product and service information, and other purposes.

5.3 RESPONDING TO REQUESTS FOR INFORMATION

To the extent authorized by the Participating Consumer(s) and to the extent such individual permission is required by law, the Supplier shall, during normal business hours, respond promptly and without charge therefore to reasonable requests of the City or CPG for information or explanation regarding the matters covered by this ESA and the supply of electricity to Participating Consumers. Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the Service Contacts shall call upon other employees or agents of the Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of the DPU or Attorney General regarding customer service.

5.4 ARRANGING FOR FIRM ALL-REQUIREMENTS POWER SUPPLY

5.4.1 Renewable Energy Obligations

Supplier shall manage the Renewable Energy Obligations pursuant to this ESA. The Supplier shall create and manage either a NEPOOL Generation Information System subaccount or reserve account exclusively for the Program to receive, account for, track, and manage any and all RECs acquired and delivered to meet the voluntary renewable requirements of Products containing Green Power ("City GIS Account"). Supplier shall provide copies of detailed reports from the City GIS Account pursuant to Article 11.1.1 and as requested from the City from time to time.

In acquiring RECs to meet any additional Green Power obligations as set forth in the then-effective Price and Term Appendix, the Supplier shall use Commercially Reasonable efforts to prioritize the RECs used to meet the Renewable Energy Obligations as follows: any renewable energy acquired for the Program, either by purchasing of renewable energy credits or by direct investment, will be sourced, in order of preference, from renewable energy projects located in Boston, located in Massachusetts, located within New England, and, where additionality can be demonstrated, elsewhere.

Only Massachusetts Class I RECs shall be used to meet the Green Power obligations from sources which do not produce greenhouse gas emissions, and a preference shall be given to new projects. The Supplier shall provide an annual report to the City produced from the City GIS Account showing the name of the source, location, technology, and date of commercial operation that is the source of each REC retired to meet the additional Green Power obligations.

5.4.2 Low-Income Consumer Discount

The City may enter into SMART Incentive Agreements for the purpose of obtaining and accumulating SMART Incentive Payments that it intends to use to apply discounts to the Retail Price charged to Low-Income Consumers. If and when applicable, the City may direct in writing the Supplier to set the Retail Price for all Low-Income Consumers to reflect a specific \$/kWh price discount (the “Low-Income Consumer Discount”) as compared to the Residential Retail Price then in effect. Supplier shall be reimbursed for all applied discounts as follows:

- a) No later than the fifteenth (15th) day of each calendar month during the Delivery Term, the Supplier shall provide the City or CPG, a detailed report showing the kWh volumes billed to each Low-Income Consumer account (“Low-Income Consumer Consumption”) during the immediately preceding month (i.e., since the last report provided to the City or CPG) (“Distribution Report”). Such Distribution Report shall include billed usage, usage cancellations, re-bills and such other information related to the supply of electricity by Supplier pursuant to this ESA as reasonably requested in writing by the City or CPG. Upon reasonable request of the City or CPG, the Supplier shall provide unique Distribution Reports for alternative or cumulative time periods within the Delivery Term. Timely delivery of all Distribution Reports shall be a material provision of this ESA.
- b) No later than five (5) Business Days following receipt of the Distribution Report, the City or CPG will notify the Supplier in writing of any disputed Low-Income Consumer Consumption information set forth in such report. The Parties will work diligently and in good faith to resolve any disagreements with respect to the disputed Low-Income Consumer Consumption information contained in the applicable Distribution Report.
- c) No later than ten (10) Business Days following receipt of a Distribution Report (monthly “Payment Due Date”), the City or CPG shall pay the Supplier an amount equal to the product of the Low-Income Consumer Discount and Low-Income

Consumer Consumption based upon the undisputed Low-Income Consumer Consumption information in the Distribution Report (“Monthly Distributions”).

- d) During the Delivery Term, the City shall direct CPG to administer and maintain a bank account (the “Payment Account”), that shall maintain an account balance of no less than two months of projected Monthly Distributions (“Minimum Balance”). The City or CPG will periodically review and adjust the Minimum Balance, higher or lower, to reflect changes to the City’s or CPG’s reasonable estimate of Low-Income Consumer Consumption. The City or CPG shall report the Payment Account balance to the Supplier on or about the seventeenth (17th) Business Day of each month or as otherwise requested by the Supplier.
- e) If the City or CPG has not made payment to the Supplier by the tenth (10th) Business Day after the Payment Due Date and after first providing CPG with written notice and five (5) Business Days to cure (“CPG Payment Default”), Supplier may recoup the balance owed by deducting such amounts from amounts Supplier owes to CPG for its Consultant Commission Fee pursuant to as set forth in Section 18.11 and the Price and Term Appendix of this ESA (“Stop Gap Funding”). CPG shall provide notice to the City of any CPG Payment Default, with copy to Supplier. In the event Supplier relies on Stop Gap Funding, CPG shall include in a subsequent Monthly Distribution from the Payment Account an amount equal to the Stop Gap Funding. Supplier shall, in turn, increase the Consultant Commission Fee payment to CPG by the same amount thereby reimbursing CPG for its Stop Gap Funding.
- f) The Parties agree that the City’s obligation to maintain the Minimum Balance and make payment of all Monthly Distributions pursuant to this section 5.4.2 are material provisions of this ESA. If the City fails to maintain the Minimum Balance or in the event of two consecutive CPG Payment Defaults, the Supplier may, at its sole discretion, either reduce or remove the Low-Income Consumer Discount at any time and seek recovery from the City or CPG for any Monthly Distributions not yet paid or otherwise recovered, provided that Supplier first deliver written notice of any failure to maintain the Minimum Balance or cure a CPG Payment Default and provide the City or CPG with ten (10) Business Days to cure.
- g) Supplier shall accurately apply the Low-Income Consumer Discount to all participating Low-Income Consumers, including such consumer accounts that may be added to the Program through periodic notifications to New Consumers pursuant to Section 3.2, and through direct consumer opt-in requests. Such application of the Low-Income Consumer Discount shall be a material provision of this ESA.
- h) The City may cause CPG, from time to time, to direct the Supplier to adjust the Low-Income Consumer Discount either higher or lower or remove the Low-Income Consumer Discount entirely. Each Party shall execute an amended Price and Term Appendix within a reasonable time following such notice and Supplier shall not be required to make any such change until an applicable amendment has been executed. Supplier’s performance in response to such direction from CPG shall be a material provision of this ESA and failure to comply shall be an Event of Default pursuant to Article 4 of this ESA.

5.4.3 Interruption to Delivery Service

Supplier shall not be responsible to the City or any Participating Consumers in the event the Local Distributor disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by the ISO-NE) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Local Distributor's facilities, to maintain the safety and reliability of the Local Distributor's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Local Distributor's transmission and/or distribution circuits, Force Majeure or the non-payment of any distribution service costs or other such costs due for services provided by the Local Distributor to a Participating Consumer.

5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Supplier shall supply electric energy to the Point of Delivery to all Participating Consumers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential, commercial, municipal, industrial) or by such other categories or terms as appear in the then effective Pricing and Term Appendix. To the extent applicable, Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the DPU, and other applicable provision of law. To the extent required by law and/or the conditions of any DPU approval of this ESA, the Supplier may not deny service to an Eligible Consumer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity). Provision of electric energy supply shall be subject to Supplier's standard credit policies, to the extent permitted by law, as described in the then effective Price and Term Appendix. Supplier shall be permitted to drop any Participating Consumer and return such consumer to the Local Distributor for failure to make timely payments of its invoice to the Local Distributor pursuant to Section 7.4.2 if Supplier has not otherwise by compensated by the Local Distributor pursuant to its Competitive Electric Supplier Service Agreement with the Local Distributor.

5.6 CUSTOMER LISTS AND APPROVAL OF GENERAL COMMUNICATIONS

Supplier shall reasonably cooperate with the City in the drafting and sending of messages and information to Eligible Consumers concerning the Program or any matter arising under or related to this ESA. Prior to sending any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), Supplier shall provide a copy of such General Communication to the City for its review to determine whether it is consistent with the purposes and goals of the City. The City shall have the right to object to such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the City, factually inaccurate or likely to mislead; provided, however, that the City's approval shall not be unreasonably withheld and: (i) that the communication shall be deemed approved if the City fails to respond within seven (7) Business Days; and (ii) that no approval shall be necessary for any communication (a) regarding any

emergency situation involving any risk to the public health, safety or welfare; (b) which has been approved by the DPU, the DOER, or any other Governmental Authority; or (c) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) or (b) above shall require approval (not to be unreasonably withheld). If the City objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the City, the Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such mailing that it has not been endorsed by the City, (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications, (iii) has stated in connection with such chance to opt not to receive such communications that “the City of Boston wants to protect Eligible Consumers from receiving marketing materials if you do not wish to do so,” and (iv) has otherwise sought input from the City as to the means by which Eligible Consumers are given a chance to remove their names from any list which may receive General Communications. The City may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the City and the Supplier shall not send such General Communication; provided, however, any such right of rejection or exclusion shall not apply to Complete Supplier’s notice to exercise or enforce its rights under the ESA or Customer Agreement, including but not limited to any notice of Force Majeure or Change in Law.

The Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send DPU-approved educational materials, opt-out notices or other communications essential to the operation of the Program. Such lists may not be used by the Supplier to market any additional products or services to Eligible Consumers or Participating Consumers.

5.7 COMMUNICATION OF INSERTS AND MESSAGES

Supplier agrees that if it communicates with Participating Consumers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the City to include no less than three (3) inserts per year into such communications, provided that the City pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Supplier may incur as a result of including such insert. Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the City’s demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Supplier fails to respond within seven (7) Business Days after receipt; and (ii) that no approval shall be necessary for any communication which has been ordered by the DPU, the DOER, or any other Governmental Authority to be so communicated.

The Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send DPU-approved educational materials, opt-out notices or other communications essential to the operation of the Program. Such lists may not be used by the Supplier to market any additional products or services to Eligible Consumers or Participating Consumers.

5.8 PARTICIPATING CONSUMER LISTS

To the extent authorized by any Participating Consumers and not prohibited by any Governmental Rule, the Supplier shall, upon written request of the City, provide a list of the Participating Consumers being served by the Supplier, including such reasonable identifying and consumption information as the City may also request to the extent such information is available to Supplier. Supplier shall provide such Participating Consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month.

5.9 COMPLIANCE WITH LAWS

The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this ESA.

5.10 CONSENT

Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event the Supplier requests the City's assistance in obtaining such consent or approval and the City anticipates that it will incur costs in fulfilling the Supplier's request, it shall give the Supplier an estimate of such costs. Upon receiving the estimate, Supplier shall determine if it continues to request the City's assistance, and if so, the Supplier shall reimburse the City for all costs, up to the estimated dollar amount, reasonably incurred by the City in connection with such efforts.

ARTICLE 6 ROLE OF THE CITY

Under this ESA, the City shall not actually receive, take title to, or be liable for the supply or delivery of All-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the City is to set the terms and conditions under which All-Requirements Power Supply will be provided by the Supplier under this ESA and to ensure that the Supplier complies with those terms and conditions, and is solely responsible for maintaining the Payment Account and issuing the Monthly Distributions to Supplier in accordance with Section 5.4.2. It is the obligation of the Supplier to arrange for delivery of All-Requirements Power Supply to Participating Consumers at the Delivery Point. The Parties agree that City is not a "distribution company", "electric company", "generation company" or "transmission company" within the meaning of M.G.L. c. 164, § 1 as a result of this ESA, unless a court, the DPU, or other lawful authority shall adjudicate to the contrary; provided, however, that the City may be considered to be operating a municipal load aggregation plan pursuant to M.G.L. c. 164, § 134. The Supplier hereby agrees that it will take no action that would make the City liable to any Participating Consumer due to any act or failure to act on the part of the Supplier relating to the delivery or supply of All-Requirements Power Supply.

ARTICLE 7 PRICES AND SERVICES; BILLING

7.1 SCHEDULE OF PRICES AND TERMS

Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in the then effective Price and Term Appendix to this ESA.

7.2 OBLIGATION TO SERVE

As between the Parties, Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for all of the Participating Consumers under the Program. Supplier, except as explicitly limited by the terms included in the then effective Price and Term Appendix, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs, subject to Supplier's standard credit policies (to the extent permitted by law), Article 5.5 hereof, the then effective Price and Term Appendix hereof and the terms of any applicable approval or other order of the DPU with respect to this ESA.

7.3 METERING

In accordance with the Local Distributor's Terms and Conditions for Suppliers (M.D.P.U. No. 4) Sections 3B(6) and 7A, as amended from time to time, the Local Distributor will be responsible for any metering which may be required to bill Participating Consumers.

7.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

7.4.1 Title

Title to All-Requirements Power Supply will transfer from Supplier to Participating Consumers at the Point of Sale. In accordance with the Local Distributor's Terms and Conditions for Suppliers (M.D.P.U. No. 4) the Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Local Distributor.

7.4.2 Billing and Payment

Unless otherwise specified in an Appendix to this ESA, all billing under this ESA shall be based on the meter readings of each Participating Consumer's meter(s) performed by the Local Distributor. Supplier shall, or shall cause, the Local Distributor or any other entity, to prepare and mail bills to Participating Consumers monthly. The Supplier shall arrange for the Local Distributor to perform billing services, and the Supplier shall adopt the billing and payment terms offered by the Local Distributor. If actual meter data is unavailable, the Supplier or the Local Distributor (as applicable) may bill based on its good faith estimates of usage, and any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

7.4.3 Regional and Local Transmission

The Retail Prices set out in the then effective Price and Term Appendix do not include current and future charges for distribution service costs collected by the Local Distributor under its distribution service tariff or local transmission costs as may be imposed by the regional power pool, ISO-NE, or individual electric utilities that have FERC transmission tariffs or other amounts as described in the then effective Price and Term Appendix. The Supplier understands that these costs will be collected by the Local Distributor. If, in the future, Supplier becomes responsible for such distribution or transmission costs, Supplier shall be entitled to collect such costs from Participating Consumers to the extent permitted by any Governmental Rules. These costs are “pass through” costs as determined by the appropriate regulatory agencies.

7.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply required to be collected by the Supplier shall be included on the Participating Consumer’s bill and shall be remitted to the appropriate taxing authority by Supplier. Participating Consumers shall be responsible for all taxes (except for taxes on Supplier’s income) associated with sales under the ESA. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Supplier.

ARTICLE 8 DEVELOPMENT OR OFFERING OF RENEWABLE ENERGY SOURCES

8.1 COMPLIANCE WITH STANDARDS

Supplier agrees that it will comply with all applicable Renewable Energy Standards.

8.2 OPTIONAL GREEN POWER PRODUCTS

Supplier agrees that it will incorporate the optional Products (including optional Green Power Products) as described in the then effective Price and Term Appendix into its provision of All-Requirements Power Supply under this ESA.

ARTICLE 9 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS

Supplier agrees that it shall comply with the provisions of 220 C.M.R. 25.00, 27.00, 28.00 and 29.00, as applicable to Suppliers, and any amendments thereto, and any code of conduct or policies the DPU may adopt in accordance with M.G.L. c. 164, § 1F(7). The Supplier shall, on or before [DATE], provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the City (which approval shall not be unreasonably withheld). Such written description shall also include the Supplier’s plans for maintaining “service quality standards”, as that phrase is used in § 1F(7) related to the performance under this Agreement; for complying with the “affirmative choice” requirements of § 1F(8); and for handling consumer complaints, including any arbitration

procedures. If a Participating Consumer so permits, to the extent such permission is required by law or the terms of any DPU order with respect to this ESA, the Supplier agrees to provide notice to the City of any consumer complaints submitted to, and recorded by, the DPU or the Massachusetts Attorney General's Office by a Participating Consumer and received by Supplier that Supplier is unable to resolve within five (5) Business Days. Supplier agrees to notify the City of such issue after the expiration of said fifth Business Day, and to grant the City the right to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by DPU regulations and other applicable law. The Supplier shall not change any such practice without the prior written consent of the City, which consent shall not be unreasonably withheld. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with DPU regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the City after providing written notice of such failure to the Supplier and allowing the Supplier sixty (60) days to cure such failure.

In addition, and in accordance with M.G.L. c. 164, § 1F(2) and 220 CMR 11.05(2)(b)19, in the event of a dispute regarding an invoice or Supplier's service under this ESA, a Participating Consumer may contact the DPU, which may refer the dispute to the Massachusetts Office for Dispute Resolution for mediation of such dispute, if the amount in dispute is greater than one hundred dollars (\$100.00) and the subject of the dispute is within the DPU's statutory and regulatory authority.

ARTICLE 10 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Supplier agrees to conduct its operations and activities under this ESA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees.

ARTICLE 11 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

11.1 POWER SUPPLY INFORMATION

11.1.1 Reporting

Monthly Commission/Usage Details Report (Appendix C) – Supplier shall provide the City or CPG with a monthly report of usage details, to back up each commission payment made to CPG, which will contain:

Required Information

- a. Aggregation Name
- b. Customer Name
- c. Load Zone (NEMA)
- d. Utility Name - (Eversource/Boston Edison),
- e. Rate Class Code (R1, R2, G1, G2, S1, etc.) at time of billing

- f. Utility Acct#
- g. Utility Meter#
- h. Inv#/Bill#
- i. Invoice Date (Period)
- j. Meter Read Cycle
- k. Monthly Usage From/Start Date
- l. Monthly Usage To/End Date
- m. # of kWh's Used
- n. Aggregation Rate (that the utility charged)
- o. Pay Date (Commission Period) (month/year)
- p. Payment/Commission (Consultant Commission Fee x kWh)
- q. Account Status (Enrolled, Active, Dropped, Cancelled)
- r. Invoice Type (Final Bill, Original, Estimate)
- s. Product Offered (Base, Standard, Optional Green)

Monthly Enrollment Report (Appendix D) – Supplier shall provide the City or CPG with a monthly report of enrollment data broken down by rate code classification (including additional breakout of R2 data; see tabs 3 and 4 of Appendix D for further clarification):

- a. Accounts Enrolled at Start of Month
- b. Number of Accounts that have Moved, Closed or Switched Supplier
- c. Number of Accounts that have Opted-Out
- d. Number of Accounts that have Opted-In
- e. Accounts Remaining at End of Month

The monthly reports will be due to the City or CPG within five (5) Business Days following the close of each month. This information shall be listed separately for each Product and Rate Class. This information shall be provided in electronic format.

Weekly Enrollment Report (Appendix E) – Supplier shall provide the City or CPG with a weekly report of enrollment transactions with the information as detailed in Appendix E to this ESA.

Operational Reports - Supplier shall provide CPG with a copy of:

- a. the Local Distributor’s sync files for the Boston CCE on a monthly basis, and
- b. all rate sheets filed by Supplier with the Local Distributor

EDI Transactions – Supplier shall provide CPG with electronic copies of all incoming and outgoing EDI transactions.

ISO-NE Settlement Reports – Provided Supplier has dedicated Load Asset(s) solely for the City relating directly to this Agreement, Supplier shall provide the City or CPG with ISO-NE settlement files for the Load Asset(s) created for the Program (hourly real-time

load obligation and monthly capacity settlement reports, inclusive of daily MW requirement, both preliminary and re-settlement files).

NEPOOL GIS Quarterly Settlement Reports – Supplier shall provide the City or CPG with all NEPOOL Generation Information System quarterly settlement reports associated with the City GIS Account (as defined in Article 5.4) for any RECs acquired and/or retired by the Supplier to meet its Green Power Product obligations pursuant to this ESA. The City acknowledges that Supplier will retire RECs only once per calendar year after June 15.

11.1.2 Consumer-Related Data

On and after the Service Commencement Date, Supplier will maintain consumer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP Tag Value. Unless restricted by applicable Governmental Rules, the Supplier will make such data available to the City or CPG upon request.

11.1.3 Standard of Care

Supplier shall use Commercially Reasonable practice in preparing and providing any information or data required under the ESA. To the extent that Supplier determines that any information or data provided hereunder is in error in any material respect, it shall provide such information or data to the City or CPG within a Commercially Reasonable time.

11.2 DISCLOSURE LABEL

Within fifteen (15) days of the end of the quarter, Supplier shall present to CPG a copy of the current “Disclosure Label” required by the DPU of all Suppliers to be disclosed to their Participating Consumers which includes information pertaining to Supplier’s power supply and a reasonably detailed description of the sources of Supplier’s power supply used to serve Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Supplier.

11.3 BOOKS AND RECORDS

Supplier shall keep its books and records directly relating to the services hereunder by Supplier to Participating Consumers in accordance with any applicable regulations or guidelines of the DPU, FERC, and any other Governmental Authority. Supplier shall provide to the City, at the Supplier’s sole expense, copies of all reports mandated by the Securities and Exchange Commission, provided that to the extent such reports are available on www.sec.gov, that shall suffice. Upon reasonable request by the City and at the City’s expense, Supplier shall provide reasonable back-up for any charge under this ESA questioned by the City.

11.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon written request, Supplier shall provide to the City a copy of each public periodic or incident-related report or record expressly and exclusively relating to this ESA which it files with any Massachusetts or federal agency regulating rates, service, compliance with environmental

laws, or compliance with affirmative action and equal opportunity requirements, unless the Supplier is required by law or regulation to keep such reports confidential. The City shall treat any reports and/or filings received from Supplier as confidential information subject to the terms of Article 16. Supplier may redact certain confidential aspects of such reports if it contains personal or private information of third parties.

11.5 AUDIT

The City may, at its cost and expense, and with reasonable prior notice to the Supplier and at reasonable times, examine the books and records of the Supplier to the extent reasonably necessary to verify the accuracy of any statement, notice, claim, demand, charge, payment, cost, expense or computation made or incurred by the Supplier under this ESA. Such records shall include NEPOOL Generator Information System records of the Supplier relevant to this ESA.

ARTICLE 12 RESOLUTION OF DISPUTES; CHOICE OF LAW

12.1 CHOICE OF LAW, JURISDICTION AND VENUE

This ESA and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts. Any litigation arising hereunder shall be brought solely in the appropriate federal court in Massachusetts or appropriate state court sitting in the Suffolk County, Massachusetts, to whose jurisdiction the parties hereby assent, waiving all objections to venue or forum.

12.2 DISPUTE RESOLUTION

The Parties agree to use their respective Commercially Reasonable efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party (ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute.

ARTICLE 13 INDEMNIFICATION

13.1 INDEMNIFICATION BY THE SUPPLIER

Up to and at the Point of Delivery, Supplier shall indemnify, defend and hold harmless the City (“City Indemnified Party”) and the City Indemnified Party’s officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, losses, 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 from or in connection with (i) any material breach by Supplier of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions or omissions (where there is a duty to act) of the Local Distributor, the City or its employees or agents, or (ii) Supplier’s actions or omissions (where there is a duty to act) taken or made in connection with Supplier’s performance of this ESA that were not Commercially Reasonable.

Supplier further agrees, if requested by the City, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article 13.1.

13.2 NOTICE OF INDEMNIFICATION CLAIMS

If the City seeks indemnification pursuant to this Article 13.2, it shall notify Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by the Supplier that it will assume the defense and indemnification of such claim, the Supplier may assert any defenses which are or would otherwise be available to the City.

13.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 13 shall survive the termination of this ESA for a period of two (2) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

13.4 DUTY TO MITIGATE

All Parties agree that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of any other Party's performance or non-performance of this ESA.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES

14.1 BY THE SUPPLIER

As a material inducement to entering into this ESA, the Supplier hereby represents and warrants to the City as of the Effective Date of this ESA as follows:

- a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
- b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- c) the execution, delivery and performance of this ESA by the Supplier are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- d) subject to the conditions set forth in Article 2.4, this ESA constitutes a legal, valid and binding obligation of the Supplier enforceable against it in accordance with its terms, and the Supplier has all rights such that it can and will perform its obligations to the City in conformance with the terms and conditions of this ESA, subject to

bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

- e) no Bankruptcy is pending against it or to its knowledge threatened against it;
- f) To the best of its knowledge, none of the documents or other written information furnished by or on behalf of Supplier to the City pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;
- g) all information furnished by Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate;
- h) the Supplier is a Forward Contract Merchant.

14.2 BY THE CITY

As a material inducement to entering into this ESA, the City hereby represents and warrants to Supplier as of the Effective Date of this ESA as follows:

- a) this ESA constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms;
- b) the execution, delivery and performance of this ESA are within the City's powers, have been or will be duly authorized by all necessary action;
- c) the City has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- d) the City is authorized and empowered by the provisions of the Restructuring Act to organize and implement the Program and has taken all action necessary to establish the Program as approved by the DPU;
- e) all Participating Consumers are bound as principals to this ESA; and the City has the authority to act on behalf of the Participating Consumers as contemplated by this ESA;
- f) to the best of its knowledge, none of the documents or other written information furnished by or on behalf of the City or its agent(s) pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;
- g) no Bankruptcy is pending or threatened against the City nor is the City contemplating Bankruptcy; and
- i) The City is a Forward Contract Merchant.

ARTICLE 15 INSURANCE AND OTHER FINANCIAL GUARANTEES

15.1 INSURANCE

The Supplier will provide and maintain during the term of the Contract all insurance required below with respect to performance of work under this Agreement by the Supplier and its agents, vendors, employees and subcontractors.

Insurance will be issued by insurers with a minimum AM Best Rating of A-VII. Insurance Certificates on Acord Forms evidencing requirements below must be provided to the Official prior to work being performed, with renewal certificates provided within 30 days of expiration. Complete copies of policy and endorsements may be required.

The City may make reasonable modifications to requirements, if necessary, to reflect work performed. These requirements shall not be construed to limit the liability of the Supplier or its insurer. Failure to maintain such insurance throughout the Contract period will constitute a material breach of contract and be grounds for termination.

Minimum Scope and Limit of Insurance

1. **Commercial General Liability:** Including bodily injury, property damage, products and completed operations, personal and advertising injury with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate limit.
2. **Workers' Compensation:** As required per Massachusetts General Law c.152 Employer's Liability E.L. \$500,000 per accident and employee, including disease.
3. **Umbrella Liability excess of General Liability, Auto Liability and Employer's Liability** for \$2,000,000 Each Occurrence/Aggregate.
4. **Professional Liability/Errors and Omissions** for \$2,000,000 per claim and \$2,000,000 in the aggregate with coverage continuing for three years after work period.
5. **Cyber Liability / Security & Privacy:** for \$10,000,000 per claim and \$10,000,000 in the aggregate with coverage continuing for one year after completion or termination of the Agreement. Policy must specifically include: a) computer or network systems attacks, b) denial or loss of service, c) introduction, implantation or spread of malicious software code, d) unauthorized Access and Use of computer systems, e) privacy liability, and f) breach response coverage equaling at least 50% of liability limit.
6. **Third Party Crime / Employee Dishonesty:** for \$5,000,000 per claim and \$5,000,000 in the aggregate.

General Conditions

1. City of Boston will be named as Additional Insured for General Liability.
2. Insurance shall be primary and non-contributory over any such insurance or self-insurance available to the City of Boston, its officials, employees and volunteers.

3. Waiver of Subrogation will be included for all coverages in favor of City of Boston.

All policies will be endorsed to provide thirty days written notice to the certificate holder, the City of Boston, in the event of cancellation, non-renewal or material changes in coverage.

15.2 LETTERS OF CREDIT

Collateral provided in the form of a Letter of Credit shall be subject to the following provisions.

- a) As one method of meeting Supplier's Letter of Credit Requirement, the Supplier may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
- b) Upon the occurrence of a Letter of Credit Default, Supplier agrees to Transfer to City either a substitute Letter of Credit, on or before the first Business Day after the occurrence thereof (or the third (3rd) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).
- c) The City need not return a Letter of Credit unless the entire principal amount is required to be returned.

15.3 ADEQUATE ASSURANCE

If the City has reasonable grounds for insecurity regarding the performance of any obligation under the ESA (whether or not then due) by the Supplier limited to the following: (i) a material change in the creditworthiness of the Supplier, or (ii) a material change in the City's estimate of potential future exposure to the Supplier, the City may increase the Credit Support Amount to reasonably reflect such additional exposure to the City, and increase Supplier's Eligible Parent Guarantee Amount or Supplier's Letter of Credit Requirement, either or both as applicable.

ARTICLE 16 CONFIDENTIALITY

The City shall act in accordance with the provisions of M.G.L. Chapter 4, Section 7, and M.G.L. Chapter 66, Section 10, and other applicable statutes, if any, relative to any requests for public information concerning this Agreement received from a third party.

To the extent consistent with the foregoing paragraph, each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's affiliates) or use for any other purpose (except with written authorization, such authorization not to be unreasonably withheld), any information received from the other that is confidential or proprietary in nature unless legally, compelled (by deposition, inquiry, request for production of documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction, or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other Governmental Authority, or by requirements of any securities law or regulation or other Governmental Rule) or as necessary to enforce the terms of this ESA. The Party receiving confidential or proprietary information shall have no obligation with respect to such information which: (i) is or becomes generally available to the public other than as a result of disclosure by the receiving Party; (ii) was in its possession prior to disclosure hereunder and which was not acquired directly or, to the Party's knowledge, indirectly from the

disclosing Party; (iii) was received from a non-party to this ESA who to the receiving Party's knowledge, was not subject to a confidentiality agreement or fiduciary obligation regarding information; (iv) was independently developed by the receiving Party without reference to the information; or (v) is required to be publicly reported under any U.S. or state securities law.

Either Party may disclose the terms of this ESA to its affiliates, and to its and officers, directors, employees, attorneys, accountants and third-party vendors as reasonably necessary to accommodate Supplier's provision of All-Requirements Power Supply or other performance pursuant to this ESA, and otherwise to entities that have executed a non-disclosure certificate or agreement in a form mutually acceptable to the Parties. This Article 16 shall survive the termination of this ESA for a period of two (2) years.

If either Party is compelled to disclose any confidential information of the other Party, such Party shall request that such disclosure be protected and maintained in confidence to the extent reasonable under the circumstances and use Commercially Reasonable efforts to protect or limit disclosure with respect to commercially sensitive terms. In addition, notwithstanding the public records laws referenced above, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resolve the scope of any required disclosure. In the event the Supplier requests the City's assistance in protecting the confidentiality of information and the City anticipates that it will incur costs in fulfilling the Supplier's request, it shall give the Supplier an estimate of such costs. Upon receiving the estimate, Supplier shall determine if it continues to request the City's assistance, and if so, the Supplier shall reimburse the City for all costs, up to the estimated amount, reasonably incurred by the City in connection with such efforts.

For the avoidance of doubt, the information related to this ESA that is considered confidential and proprietary in nature shall include the following:

- a) any account information related to the Participating Consumers including, without limitation, account number, historic usage data, metering, and billing and payment information;
- b) any information regarding transactions entered into by Supplier and any third parties in connection with the provision of All-Requirements Power Supply;
- c) any list of Participating Consumers;
- d) any information disclosed by a Party during any settlement discussions;
- e) Supplier's insurance policies;
- f) any financial security instrument(s) provided by Supplier, including, but not limited to, any guaranty or letter of credit;
- g) any non-public information provided by Supplier; and
- h) any information which either Party should reasonably understand to be confidential and proprietary by virtue of the sensitive nature of the information.

ARTICLE 17 CHANGE IN LAW

If, after the Effective Date, a Change in Law occurs or New Taxes are imposed, and such event or taxes have a direct, material and adverse effect on the economic benefits to a Party of this ESA, the affected Party shall send written notice to the other Party, setting forth the Change in Law or New Taxes and reasonably demonstrating the effect of the same on the affected Party. Any DPU-approved changes to the Local Distributor's Purchase of Receivable ("POR") Plan originally approved by the DPU pursuant to D.P.U. 10-53 shall be deemed a change in Law hereunder. For the purposes of clarity, periodic changes to the purchase of receivable discount rate and timing of payments filed by the Local Distributor and approved by the DPU shall not constitute a Change in Law hereunder. Upon delivery of such notice, the Parties shall use reasonable efforts to negotiate an amendment to this ESA to mitigate such effect. Alternatively, if as a direct result of such a Change in Law or New Taxes, the Supplier incurs additional, material costs, the Supplier shall provide a written notice to the City that documents: a) the effective date of the Change in Law or New Taxes; b) a detailed explanation and reasonable demonstration of the material costs incurred as a result of the Change in Law or New Taxes; c) the timing of the cost impact to be incurred by the Supplier; d) the proposed price increase per kWh to be passed on to Participating Consumers; and e) a proposed plan for coordinating with the Local Distributor for an increase in the price per kWh that is billed by the Local Distributor, designed to reimburse the Supplier for such cost impact. If the City and the Supplier cannot agree on the amendment to this ESA or reimbursement contemplated by this section, the matter may be subject to dispute resolution in accordance with section 12.2. In no event shall a price change become effective without providing Participating Consumers with a 30-day advance notice of the price change.

ARTICLE 18 MISCELLANEOUS

18.1 ASSIGNMENT

Supplier shall not assign its rights and privileges under this ESA without the prior written approval of the City. Such approval may be denied at the reasonable discretion of the City if it determines that the proposed assignee does not have at least the same ability to perform and the same financial ability as the assigning Supplier. Notwithstanding the foregoing, the Supplier may assign this ESA without the consent of City to an affiliated entity under common control or management with Supplier or Supplier's corporate parent with written notice to City, provided that either (a) the original Supplier shall remain liable for all obligations hereunder, or (b) the corporate parent has an adequate Credit Rating and fully guarantees the obligations of the assignee under the ESA. Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA. The City may assign this ESA without the prior consent of Supplier provided that the proposed assignee has at least the same financial ability as the City and such assignment would not in any way impair the rights and interests of Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

18.2 DIRECT MARKETING

Supplier agrees not to engage in any direct marketing to any Participating Consumer that relies upon Supplier's unique knowledge of, or access to, Participating Consumers gained as a result of this ESA. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between the Supplier and the Consumer. Broad-based programs of the Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing."

The Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send DPU-approved educational materials, opt-out notices or other communications essential to the operation of the Program. Such lists may not be used by the Supplier to market any additional products or services to Eligible Consumers or Participating Consumers.

18.3 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and addressed to:

If to Supplier:

Constellation NewEnergy, Inc.
1001 Louisiana Street
Constellation Suite 2300
Houston, Texas 77002
(844) 636-3749 (phone)
(888) 829-8738 (fax)
ContractAdmin@constellation.com

If to City:

Mr. Mark Cappadona
Colonial Power Group, Inc.
5 Mount Royal Avenue, Suite 5-350
Marlborough, Massachusetts 01752
(508) 485-5858 (phone)
(508) 485-5854 (fax)
mark@colonialpowergroup.com

With a Copy To:

Mr. David Musselman, Environment Dept.
City of Boston
City Hall Room 709, 1 City Hall Square
Boston, Massachusetts 02201
(617) 635-3254 (phone)
(617) 635-3850 (fax)
david.musselman@boston.gov

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA; or (iii) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express mail service, addressed to the

intended recipient at its address set forth in this ESA. Any party may change its address and contact person for the purposes of this Article 18.3 by giving notice thereof in the manner required herein.

18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for the Supplier changes, Supplier shall give prompt notice to the City in the manner set forth in Article 18.3. In the event that the name or telephone number of any such contact person for the City changes, prompt notice shall be given to the Supplier in the manner set forth in Article 18.3.

18.5 ENTIRE ESA; AMENDMENTS

This ESA and the Related Documents constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto.

18.6 FORCE MAJEURE

If by reason of *Force Majeure* any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after obtaining knowledge of the occurrence of the Force Majeure, gives the other Party hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If any event of Force Majeure continues for a period of ninety (90) days or longer, either Party may terminate this ESA by sending the other Party a written notice as set forth in Article 4.2; provided, however, that the same shall not constitute a default under this ESA and shall not give rise to any damages.

18.7 EXPENSES

Each Party hereto shall pay all expenses incurred by it in connection with its entering into this ESA, including without limitation, all of its attorneys' fees and expenses.

18.8 NO JOINT VENTURE

Supplier will perform all services under this ESA as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the City and the Supplier hereunder are individual and neither collective nor joint in nature.

18.9 JOINT WORK PRODUCT

This ESA shall be considered the work product of all Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

18.10 COUNTERPARTS

This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

18.11 THIRD PARTIES

The Parties acknowledge that the Retail Price(s) for All-Requirements Power Supply as set out in the then effective Price and Term Appendix includes a Consultant Commission Fee equal to an amount per kWh as set forth in the then effective Price and Term Appendix of Participating Consumers' actual usage for which payment has actually been received by the Supplier, payable to CPG, during the term of the Consultant Agreement for Management of the Boston Municipal Aggregation Program and Energy-Related Services effective February 26, 2019 or such successor agreement, as well as an Operational Adder payable to the City, as set forth in the then effective Price and Term Appendix. Supplier shall include this Consultant Commission Fee and Operational Adder in the Retail Price for All-Requirements Power Supply and Supplier shall make monthly Consultant Commission Fee and Operational Adder payments on behalf of Participating Consumers, and acknowledges this obligation as a material obligation of this ESA; provided however, that (i) this ESA remains in full force and effect, and (ii) the Consultant Commission Fee and Operational Adder shall be paid by the end of the subsequent calendar month following receipt by Supplier of payments by Participating Consumers. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. Except as otherwise set forth under the ESA, there shall be no other third-party beneficiaries to this ESA.

18.12 WAIVER

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this ESA shall only be effective if made in writing and signed by the Party who is making such waiver.

18.13 CO-OPERATION

In the event this ESA requires approval from a Governmental Authority, each Party acknowledges and agrees that they shall use Commercially Reasonable efforts to cooperate in seeking to secure such approval.

18.14 PLAN

Supplier agrees that it has been provided with and had a reasonable opportunity to read the Plan. The Parties agree that the Plan, in the forms as it exists on the Effective Date of this ESA, is incorporated into this ESA by reference, and that it shall be construed harmoniously to the greatest practicable extent; notwithstanding the foregoing, in the event of any conflict between this ESA and the Plan, this ESA shall govern. The City will provide Supplier with amendments to the Plan as they are adopted; provided, however, that such amendments are not incorporated into this ESA as a result of such adoption. Any amendments hereto must be made in accordance with Article 18.5 of this ESA.

18.15 ADVERTISING LIMITATIONS

The Parties agree not to use the name of the other Party or make any reference to the other Party in any advertising or marketing materials or purposes, without the prior written consent of the other Party; *provided, however*, no such consent shall be required for other information to be distributed publicly as required by the DPU or for educational purposes relating to the Program. Any proposed use of the name of a Party must be submitted in writing for agreement and prior approval, which shall not be unreasonably withheld. The Parties may elect to collaborate to prepare pre-approved marketing for the City to utilize during the Term of this ESA without approval for each usage. The City acknowledges that the Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Supplier. No right, license or interest in this trademark and/or trade name is granted to the City hereunder, and the City agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

18.16 PRESS RELEASES

The Parties shall not issue a press release or make any public statement with respect to this ESA without the prior written agreement of the other Party (not to be unreasonably withheld) with respect to the form, substance and timing thereof, except either Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

18.17 HEADINGS AND CAPTIONS

The headings and captions appearing in this ESA are intended for reference only and are not to be considered in construing this ESA.

18.18 SURVIVAL OF OBLIGATION

Termination of this ESA for any reason shall not relieve the City or the Supplier of any obligation accrued or accruing prior to such termination.

18.19 REMEDIES

18.19.1 General

Subject to the limitations set forth in Article 18.19.3 below and Article 4, the City and the Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

18.19.2 City's Rights and Remedies

If at any time an uncured Event of Default with respect to Supplier has occurred and is continuing, then, unless the Supplier has paid in full all of its obligations that are then due less any Monthly Distributions owed and not paid by City to Supplier ("Obligations"), the City may exercise any and all rights and remedies at law or equity against Supplier, Supplier's Credit Support Provider, or with respect to Letters of Credit, one or more of the following rights and remedies: (i) all rights and remedies available to the City under applicable law with respect to Letters of Credit held by the City, (ii) the right to set-off any amounts payable by the Supplier with respect to any Obligations against any Letters of Credit held by the City, or (iii) the right to liquidate any Letters of Credit held by the City and to apply the proceeds of such liquidation of the Letters of Credit to any amounts payable to the City with respect to the Obligations in such order as the City may elect. For purposes of this Paragraph, the City may draw on the entire undrawn portion of any Letter of Credit limited to any unpaid Obligations. The Supplier shall remain liable for amounts due and owing to the City that remain unpaid after the application, pursuant to this Paragraph, of Letters of Credit to the Obligations.

18.19.3 Limitations

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT.

NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT OR THE COMPETITIVE SUPPLIER'S PERFORMANCE HEREUNDER. THE COMPETITIVE SUPPLIER SHALL NOT BE LIABLE FOR ANY DAMAGE TO A PARTICIPATING CUSTOMER'S EQUIPMENT OR FACILITIES.

Notwithstanding the foregoing, this Section shall not limit a Party's rights under Article 13 to seek indemnification from the other Party or consequential, punitive, or incidental damages or other such losses claimed by third-parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this ESA as of the Effective Date

CONSTELLATION NEWENERGY, INC.

By: *Nancy M. Fischer*
Name: Nancy Fischer
Title: *VP Retail Operations*
Address: 1310 Point Street, 9th Floor
Baltimore, MD 21231

Dated: 4/14/2021

CITY OF BOSTON, MASSACHUSETTS

By: *Carl Spector*
Name: Carl Spector
Title: *Commissioner of the Environment*
Address: City Hall Room 709, 1 City Hall Square
Boston, MA 02201

Dated: *23 April 21*

Approved as to Form:
Henry Luthin
Henry Luthin, *Corporation Counsel*

Dated: *April 15, 2021*

Approved:
Kim Jahey
Kim Jahey, *Mayor*

Dated: *April 23, 2021*

APPENDIX A

FORM OF PRICE AND TERM APPENDIX NO. 1 Boston's Community Choice Electricity Program

This Price and Term Appendix shall establish the Delivery Term and Retail Prices to be charged to Participating Consumers during the Delivery Term (as defined below) regarding the sale/purchase of All-Requirements Power Supply specified herein under the terms and conditions under the Electric Service Agreement, dated April 23, 2021 ("ESA") between Supplier and the City, as specified and modified herein.

- 1. Retail Price by Rate Classification:** The Retail Prices as set out in the tables below shall be fixed for the entire length of each Delivery Term.

STANDARD PRODUCT

[All Eligible Consumers will be enrolled in the standard Product unless they opt-out.]

Rate Class	Retail Price \$/kWh
Residential	\$ 0.11161
Small C&I	\$ 0.11161
Med-Large C&I	\$ 0.11161
Streetlight	\$ 0.11161

OPTIONAL BASIC PRODUCT

[Eligible Consumers will only be enrolled in the optional base Product if they elect it.]

Rate Class	Retail Price \$/kWh
Residential	\$ 0.10771
Small C&I	\$ 0.10771
Med-Large C&I	\$ 0.10771
Streetlight	\$ 0.10771

OPTIONAL GREEN 100 PRODUCT

[Eligible Consumers will only be enrolled in the optional Green Power Product if they elect it.]

Rate Class	Retail Price \$/kWh
Residential	\$ 0.13858
Small C&I	\$ 0.13858
Med-Large C&I	\$ 0.13858
Streetlight	\$ 0.13858

2. Terms for System Supply Service

(a) **Delivery Term:** The Retail Prices apply to service commencing with the Participating Consumers’ first meter read dates for the month of November, 2021 (billed in arrears, therefore the December 2021 billing statements) and terminating with the Participating Consumers’ first meter read dates for the month of December 2023 (final bill, therefore the January 2024 billing statements).

(b) **Eligible Consumer Opt-Out:** Participating Consumers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Consumers are to provide five (5) days’ notice to the Supplier of such termination. There are no fees or charges for Participating Consumers to opt-out or terminate service.

3. Definition of Green Power by Product

The table below defines the type and quantify of Green Power included in each of the Products defined in Section 1 of this Price and Term Appendix.

Product	Green Power	Quantity	
		% of Program Load	Alternate Description
Standard Product	MA RPS Class I RECs*	10%	
Optional Basic Product	n/a	n/a	
Optional Green 100 Product	MA RPS Class I RECs*		Additional quantity of MA Class I RECs such that the total number of MA Class I RECs, including the RPS Class I minimum standard, equals 100% throughout Term

* As specified in Section 5.4.1 of the ESA.

4. Renewable Energy Obligations

- a) The Retail Prices set out in Section 1 of this Price and Term Appendix are inclusive of all Renewable Energy Obligations as of the signature date below.
- b) The table below defines the Party responsible for specific components of the Renewable Energy Obligations for each of the Products defined in Section 1 of this Price and Term Appendix.

Product	Renewable Energy Standards	Optional Green Products
Standard Product	Supplier	Supplier
Base Product	Supplier	n/a
Optional Green Product	Supplier	Supplier

5. REC Option Prices: {reserved}

- 6. Consultant Commission Fee and City Operational Adder:** Supplier shall be permitted to claw-back any payments made by Supplier to CPG for which Supplier has not received payment. Any payment due to CPG pursuant to this ESA shall be contingent upon Supplier being paid the owed Monthly Distributions. Supplier shall include the Consultant Commission Fee and City Operational Adder in the Retail Prices for each Product and Supplier shall pay to CPG and the City, respectively, the following amounts multiplied by Participating Consumers’ metered usage:

Consultant Commission Fee: \$0.0007/kWh; and

City Operational Adder: \$0.00008/kWh.

- 7. Credit Support:** Supplier’s Credit Support Amount in the form of the Parent Guarantee is forth below and is required through the date listed in the table below, provided however, such Credit Support Amount is set at the amount shown below for the term of this ESA. Supplier shall deliver to the City the Parent Guarantee required to be provided by Supplier’s Credit Support Provider, simultaneously with the execution of the ESA and City acknowledges that such issued Parent Guarantee shall superseded and replace any previously provided Parent Guarantee and this Price and Term Appendix.

	Amount (US\$)	Date Required Through
Credit Support Amount	\$15,000,000	

8. Ratification of the Terms and Conditions of the Agreement

- a) Except as expressly amended or waived by this Price and Term Appendix, the terms, conditions, covenants, agreements, warranties and representations contained in the Electric Supply Agreement are in all respects ratified, confirmed and remade as of the

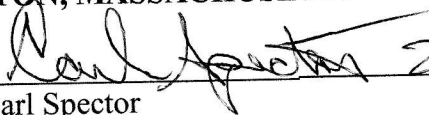
date hereof and, except as amended or waived hereby, shall continue in full force and effect.

- b) Nothing in this Price and Term Appendix shall, or shall be construed to, alter or amend any other Price and Term Appendices.
- 9. **Counterparts:** This Price and Term Appendix may be executed in counterparts, all of which together shall constitute one and the same instrument. This Price and Term Appendix constitutes part of and is subject to the terms and provisions of the Electric Service Agreement.

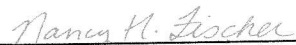
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IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Price and Term Appendix on their behalf as of the date first above written.

CITY OF BOSTON, MASSACHUSETTS

By:  23 April 21
Name: Carl Spector
Title: *Commissioner of the Environment*

CONSTELLATION NEW ENERGY, INC.

By:  4/14/2021
Name: Nancy Fischer
Title: *VP Retail Operations*

APPENDIX B

SUPPLIER OPERATIONAL RESPONSIBILITIES & REQUIREMENTS

**BOSTON CCE
SUPPLIER OPERATIONAL RESPONSIBILITIES AND REQUIREMENTS**

ESA Section

3.2 MAILINGS ASSOCIATED WITH CONSUMER NOTIFICATION -- INITIAL & SUBSEQUENT ENROLLMENTS.

OBTAIN ELIGIBLE CUSTOMER LIST (ALL ACCOUNTS ON BASIC SERVICE THAT HAVE NOT BEEN PREVIOUSLY MAILED A CONSUMER NOTIFICATION) FROM THE CITY OR ITS AGENT
OBTAIN MOCK UPS OF ALL MAILING MATERIALS FROM THE CITY OR ITS AGENT
PROVIDE PROOFS TO CITY OR ITS AGENT FOR APPROVAL
REVIEW POSTAL REPORTS ON ADDRESS CHANGES AND DROPS TO CORRECT ANY GLARING ISSUES
PROVIDE LIVE PROOFS TO CITY OR ITS AGENT FOR FINAL APPROVAL
ENSURE THE MAILING DROPS IN ACCORDANCE WITH MANDATED 37 DAY OPT OUT PERIOD
THE COMPETITIVE SUPPLIER WILL CONDUCT SUBSEQUENT OPT-OUT MAILINGS IN THE TIMEFRAME NECESSARY AS REASONABLY DIRECTED BY THE CITY OR ITS AGENT.
PROVIDE THE CITY OR ITS AGENT A LIST OF ALL ACCOUNTS FOR WHICH THE CONSUMER NOTIFICATION MAILING WAS RETURNED AS UNDELIVERABLE AS WELL AS ALL OPTS-OUTS BY ACCOUNT (RECEIVED BY PHONE, ONLINE OR POSTCARD)

3.4 INITIAL ENROLLMENT

TRACK ALL INITIAL OPT OUTS RECEIVED DURING INITIAL 30 DAY OPT OUT PERIOD

RECORD ALL OPT OUT CARDS
RECORD ALL MAIL RETURNED UNDELIVERABLE
RECORD ALL OPT OUT PHONE CALLS
RECORD ONLINE OPT OUT FORMS
MAINTAIN LIST OF ALL OPT OUTS/UNDELIVERABLES

TRACK ALL OPT INS RECEIVED DURING

INITIAL 30 DAY BEFORE ENROLLMENT -

RECORD ONLINE OPT IN FORMS
RECORD ALL OPT IN PHONE CALLS
RECORD ONLINE OPT IN FORMS
MAINTAIN A LIST OF ALL OPT INS

UPDATE THE ORIGINAL ELIGIBLE CUSTOMER LIST ACCOUNTING FOR THE OPT INS AND OPT OUTS

SCHEDULE EDI ENROLLMENTS 2 WEEKS PRIOR TO EACH METER READ CYCLE

THE SUPPLIER SHOULD WORK WITH THE UTILITY TO RESOLVE REJECTIONS. (BEING VIGILANT WITH FOLLOW UP IS CRUCIAL BECAUSE IF THE METER READ IS MISSED BY A DAY THE CLIENT LOSES A WHOLE MONTH OF SAVINGS.)

REJECTIONS SHOULD BE RESOLVED WITHIN 7 BUSINESS DAYS

REJECTIONS OCCUR IN THE FOLLOWING 2 SCENARIOS:

1. REJECTIONS THAT OCCUR WHEN AN AGGREGATION TRANSFERS TO A NEW SUPPLIER.

THE FOLLOWING REJECTIONS DO NOT NEED TO BE CORRECTED WITH THE UTILITY WHEN A TRANSFER HAPPENS:

- A. CUSTOMER ENROLLED (THE CUSTOMER DECIDED TO LEAVE THE AGGREGATION AND ENROLL WITH ANOTHER SUPPLIER)
- B. ACCOUNT NOT FOUND
- C. ACCOUNT HAS A SUPPLIER BLOCK (ALL ENROLLMENTS REJECTED PER CUSTOMER REQUEST / CAB NOT SUPPORTED).
- D. ACCOUNT EXISTS BUT IS NOT ACTIVE

THE FOLLOWING REJECTIONS DO REQUIRE THE SUPPLIER TO REACH OUT TO THE UTILITY TO CORRECT. THE UTILITY SHOULD EITHER MANUALLY ENROLL THE ACCOUNT, OR PROVIDE YOU INFORMATION SO THAT YOU CAN UPDATE YOUR SYSTEM AND RESUBMIT.

- A. ACCOUNT NAME DOES NOT MATCH ACCOUNT (ASK FOR NEW NAME AND NAME KEY AND RESUBMIT)
- B. SERVICE IS NOT ELIGIBLE: CONTACT UTILITY TO GET CORRECT CODE OR SEARCH YOUR DATABASE FOR ANOTHER ENROLLED ACCOUNT LIVING ON THE SAME STREET TO GET CODE.
- C. INVALID SERVICE IDENTIFIER

2. REJECTIONS THAT OCCUR WHEN A CUSTOMER CALLS THE SUPPLIER TO OPT IN OR WHEN AN ONLINE OPT IN FORM IS SUBMITTED

ANY REJECTION THAT OCCURS WHEN A CUSTOMER MAKES AN ATTEMPT TO JOIN THE AGGREGATION EITHER NEEDS TO BE FOLLOWED UP WITH THE CUSTOMER OR THE UTILITY.

REJECTIONS THAT NEED TO FOLLOW UP WITH THE UTILITY

- A. SERVICE IS NOT ELIGIBLE: CONTACT UTILITY TO GET CORRECT CODE OR SEARCH YOUR DATABASE FOR ANOTHER ENROLLED ACCOUNT LIVING ON THE SAME STREET TO GET CODE.
- B. ACCOUNT NAME DOES NOT MATCH ACCOUNT (ASK FOR NEW NAME AND NAME KEY AND RESUBMIT)
- C. SPECIAL CONDITIONS APPLY
- D. INVALID SERVICE IDENTIFIER

REJECTIONS THAT NEED THE SUPPLIER TO CONTACT THE CUSTOMER

- A. SUPPLIER BLOCK (ASK CUSTOMER TO REMOVE BLOCK AND THEN RESUBMIT ONCE BLOCK IS REMOVED)
- B. CUSTOMER ENROLLED (ASK CUSTOMER TO CONTACT CURRENT SUPPLIER AND HAVE THEIR ACCOUNT DROPPED. ONCE THIS IS DONE, RESUBMIT ENROLLMENT)
- C. ACCOUNT NOT FOUND (ASK CUSTOMER TO RE-CHECK THAT THE ACCOUNT NUMBER PROVIDED WAS CORRECT. SOME TOWNS HAVE THE SAME UTILITY FOR THEIR GAS AND ELECTRIC BILLS, AND OFTEN PROVIDE US THE GAS ACCOUNT NUMBER INSTEAD OF THEIR ELECTRIC ACCT#)

3.4 ONGOING (AFTER INITIAL ENROLLMENT FILE HAS BEEN UPLOADED AND ACCOUNT IS ENROLLED AGGREGATION))

MONITOR ALL CHANGES IN RATE CLASS AND SUBMIT ANY NECESSARY **CHANGE RATE REQUESTS** WITHIN 7 DAYS OF UTILITY EDI NOTIFICATION (ex. R1 changes to R2, R2 changes to R1, R1 changes to G1 etc.)

PROCESS ALL "OPT OUTS/DROPS" WITHIN 1 BUSINESS DAY

PROCESS ALL "OPT INS/ENROLLMENTS" WITHIN 1 BUSINESS DAY

RESOLVE ALL REJECTIONS AS STATED ABOVE

3.4 RATE UPDATES

PROCESS RATES CHANGES WITHIN 2 WEEKS FOLLOWING METER READ ASSOCIATED WITH NEW RATE TERM START

5.2 CALL CENTER AND CUSTOMER SERVICE

SET UP CALL CENTER SPECIFIC TO CITY OF BOSTON

SET UP CITY-DEDICATED TOLL-FREE NUMBER; USE GREETING CREATED BY THE CITY [TBD]

CALL CENTER MUST BE ABLE TO PROVIDE INTERPRETERS FOR 26 LANGUAGES PER THE CONSUMER NOTIFICATION BABEL SHEET

ALL CALLS MUST BE ANSWERED BY THE 3RD RING

HOLD TIMES AFTER AUTO ANSWER SHOULD NOT EXCEED ONE MINUTE

ONCE ANSWERED BY AGENT, 2 MINUTE HOLD TIME ONLY IF CALL NEEDS TO BE ESCALATED OR AN INTERPRETER IS REQUIRED

7.4.4 TAX EXEMPT CERTIFICATES

COLLECT AND PROCESS TAX EXEMPT CERTIFICATES

11.1 REPORTING

PROVIDE MONTHLY COMMISSION/USAGE AND SUMMARY ENROLLMENT REPORTING BY THE 20TH OF EACH MONTH (MUST INCLUDE METER#)

PROVIDE WEEKLY ENROLLMENT STATUS REPORT IN THE FORMAT SHOWN IN "WEEKLY ENROLLMENT REPORT"

PROVIDE COLONIAL WITH ELECTRONIC COPIES OF ALL INCOMING EDI TRANSACTIONS

PROVIDE COLONIAL ON MONTHLY BASIS WITH COPY OF EVERSOURCE'S SYNC FILE FOR THE BOSTON CCE

PROVIDE COLONIAL WITH COPY OF ALL RATE SHEETS FILED WITH EVERSOURCE

PROVIDE TO COLONIAL: AGGREGATED REPORT BY CUSTOMER CLASS OF ISO SETTLEMENT DATA, INCLUDING HOURLY LOAD (RTLO) AND MONTHLY CAPACITY SETTLEMENT REPORTS, INCLUSIVE OF DAILY MW REQUIREMENT, BOTH PRELIMINARY AND RE-SETTLEMENT FILES.

APPENDIX C

MONTHLY COMMISSION REPORT TEMPLATE
[Commission/Usage Details]

Monthly Reporting Requirements for Commission Payment

City/Town Name	Customer Name	Load Zone	Utility	Rate Code	Account Number

FIELD

City/Town Name
 Customer Name
 Load Zone
 Utility
 Rate Code
 Account Number
 Meter #
 Invoice #
 Bill Date
 Cycle
 Meter Read Start
 Meter Read End
 Bill Usage
 ESA Rate
 Commission Pay Date/Month
 Commission Amount

DESCRIPTION

Aggregation Name
 Customer Name
 Load Zone (NEMA)
 Utility Name - Eversource/Boston Edison
 Rate Class Code (R1, R2, G1, G2 S1, etc...) at time of billing
 Utility Acct#
 Utility Meter#
 Inv#/Bill#
 Invoice Date (Period)
 Meter Read Cycle
 Monthly Usage From/Start Date
 Monthly Usage To/End Date
 # of KWH's used
 Aggregation Rate (that the Utility charged)
 Pay Date (Commission Period) (Month/Year)
 Payment/Commission (.0007 x kwh)

Not Required but can be helpful

Account Status
 Invoice Type
 Product (Standard or Optional)

Account Status (Enrolled, Active, Dropped, Cancelled)
 Invoice Type(Final Bill, Original, Estimate)
 Product Offered (Standard, Base, Optional Green Power)

SA#	Meter #	Invoice #	Bill Date	Cycle	Meter Read Start	Meter Read End

Bill Usage	ESA Rate	Commission Pay Date/Month	Commission Amount	Account Status	Invoice Type	Product (Standard or Optional)


APPENDIX D
MONTHLY ENROLLMENT REPORT TEMPLATE

Use this form when the distributor = **EVERSOURCE**


Enter City/Town Name

<i>Month Invoiced By Distributor</i>	NON R2 Residential Account Count						<i>Start</i>	<i>New Supplier/Moved/Closed</i>
	<i>Start</i>	<i>New Supplier/Moved/Closed</i>	<i>Opt Outs (including Initial and Returned Mail)</i>	<i>Initial Eligible Customers/Initial Eligible Sweeps/Opt Ins</i>	<i>End</i>			
Apr-20	-				-	-		
Mar-20	-				-	-		
Feb-20	-				-	-		
Jan-20	-				-	-		
Dec-19	-				-	-		
Nov-19	-				-	-		
Oct-19	-				-	-		
Sep-19	-				-	-		
Aug-19	-				-	-		
Jul-19	-				-	-		
Jun-19	-				-	-		
May-19	-				-	-		
Apr-19	-				-	-		
Mar-19	-				-	-		
Feb-19	-				-	-		
Jan-19	-				-	-		

EVERSOURCE/GREATER BOSTON	R1	NON R2 Residential
EVERSOURCE/GREATER BOSTON	R2	R2
EVERSOURCE/GREATER BOSTON	R3	NON R2 Residential
EVERSOURCE/GREATER BOSTON	R4	NON R2 Residential
EVERSOURCE/GREATER BOSTON	G1	SMALL C&I
EVERSOURCE/GREATER BOSTON	G2	SMALL C&I



EVERSOURCE/GREATER BOSTON	G3	MED-LRG C&I
EVERSOURCE/GREATER BOSTON	S1	STREETLIGHTS
EVERSOURCE/GREATER BOSTON	S2	STREETLIGHTS
EVERSOURCE/GREATER BOSTON	S3	STREETLIGHTS
EVERSOURCE/GREATER BOSTON	T1	SMALL C&I
EVERSOURCE/GREATER BOSTON	T2	MED-LRG C&I



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APPENDIX E
WEEKLY ENROLLMENT REPORT TEMPLATE

WEEKLY ENROLLMENT REPORT

Utility Acnt Number	SAA# (Evr West Only)	Meter# (Evr East and Unitil Only)	Enrollment Status	Enroll Start Date	Last Dropped Date	Utility Reject Reason/Description	OPT OUT/OPT IN	Utility	Customer Name
1234512345			Active	10/22/2019			OPT IN Rcvd 10.1.19	MAELEC	JOHN SMITH
1234512346			Dropped	09/22/2018	11/23/2019			MAELEC	JANE DOE
1234512347			Rejected			Acct not Found		MAELEC	MARY WHITE
1234512348			Submitted					MAELEC	COMCAST CABLE
1234512349			Closed				OPT OUT Postcard	MAELEC	SAM SOUSA
1234512350			Closed				Undeliverable Mail	MAELEC	FRANK COSTA

Validation Name	Congest Zone	Service Address	Service City	Service State	Service Zip	Billing Cycle	Rate Class	Mail Address	Mail City	Mail State	Mail Zip	Email
SMIT	WCMASS	1 MAIN ST	MARLBORO	MA	01852	06	R1A	1 MAIN ST	MARLBORO	MA	01852	
JANE	WCMASS	2 MAIN ST	MARLBORO	MA	01852	16	G1A	2 MAIN ST	MARLBORO	MA	01852	
WHIT	WCMASS	3 MAIN ST	MARLBORO	MA	01852	15	R2A	3 MAIN ST	MARLBORO	MA	01852	
COMC	WCMASS	4 MAIN ST	MARLBORO	MA	01852	16	G2A	4 MAIN ST	MARLBORO	MA	01852	
SOUS	WCMASS	5 MAIN ST	MARLBORO	MA	01852	16	R1A	5 MAIN ST	MARLBORO	MA	01852	
COST	WCMASS	6 MAIN ST	MARLBORO	MA	01852	16	R1A	6 MAIN ST	MARLBORO	MA	01852	

Phone#	Utility Rate Code	Utility Rate Value	Utility Price Factor	Last Capacity Value	Aggregator Code (CD_CNTY - Ngrid only)
	M01	0.09690	0000969	1.857	8824
	M01	0.09690	0000969	1.2	8824
	M01	0.09690	0000969	0.78	8824
	M01	0.09690	0000969	41.2	8824
	M01	0.09690	0000969	3.75	8824
	M01	0.09690	0000969	5.12	8824

APPENDIX F

FORM OF STANDARD STANDBY LETTER OF CREDIT

DATE: _____

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

BENEFICIARY:
NAME
ADDRESS
CITY, STATE ZIP

APPLICANT:

AMOUNT: USD _____ ([WRITTEN] UNITED STATES DOLLARS)

EXPIRY DATE:

LADIES AND GENTLEMEN:

BY ORDER OF OUR CLIENT, [_____] [ON BEHALF OF _____], WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. _____ IN YOUR FAVOR FOR DRAWINGS NOT TO EXCEED THE AGGREGATE SUM OF _____ DOLLARS (\$_____), EFFECTIVE IMMEDIATELY. THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT OUR OFFICE **BANK NAME, BANK ADDRESS, ATTENTION: LETTER OF CREDIT DEPARTMENT** AND EXPIRES WITH OUR CLOSE OF BUSINESS ON _____.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE BY PAYMENT AT SIGHT WITH **BANK NAME, BANK ADDRESS, ATTENTION: LETTER OF CREDIT DEPARTMENT** OF YOUR SIGNED STATEMENT IN THE FORM OF ANNEX A, ATTACHED HERETO.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT THE EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENTS FOR PERIODS OF ONE (1) YEAR FROM THE PRESENT EXPIRATION DATE, AND THEREAFTER FOR ONE YEAR FROM EACH FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO THE THEN APPLICABLE EXPIRATION DATE WE NOTIFY YOU IN WRITING BY REGISTERED MAIL, RETURN RECEIPT REQUESTED OR COURIER SERVICE THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED BEYOND THE THEN APPLICABLE EXPIRATION DATE.

THE AMOUNT, WHICH MAY BE DRAWN BY YOU UNDER THIS LETTER OF CREDIT, SHALL BE AUTOMATICALLY REDUCED BY THE AMOUNT OF ANY PAYMENTS MADE UNDER THIS LETTER OF CREDIT.

PARTIAL DRAWINGS ARE PERMITTED HEREUNDER.

WE HEREBY ENGAGE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN STRICT COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF DRAWN AND PRESENTED FOR PAYMENT ON OR BEFORE THE EXPIRY DATE OF THIS LETTER OF CREDIT. WE SHALL EFFECT PAYMENT THREE BUSINESS DAYS AFTER RECEIPT OF DOCUMENTS IN STRICT CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT.

AS USED HEREIN "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY OR SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN NEW YORK CITY ARE AUTHORIZED OR REQUIRED TO CLOSE BY LAW.

THIS LETTER OF CREDIT IS SUBJECTED TO AND GOVERNED BY LAWS OF THE STATE OF NEW YORK AND THE 2007 REVISION OF THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL CHAMBER OF COMMERCE (PUBLICATION NO. 600). IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL.

SHOULD YOU HAVE OCCASION TO COMMUNICATE WITH US REGARDING THIS LETTER OF CREDIT, KINDLY DIRECT YOUR COMMUNICATIONS TO Bank, BANK ADDRESS, ATTENTION: LETTER OF CREDIT DEPARTMENT MAKING SPECIFIC REFERENCE TO OUR LETTER OF CREDIT NO. _____ . FOR INQUIRIES YOU MAY CONTACT US AT _____ .

ANNEX A TO LETTER OF CREDIT NO.

CERTIFICATE FOR DRAWING

TO: **BANK NAME**
BANK ADDRESS
ATTENTION: LETTER OF CREDIT DEPARTMENT

RE: IRREVOCABLE LETTER OF CREDIT NO []

THE UNDERSIGNED, THE AUTHORIZED OFFICER OF THE BENEFICIARY, HEREBY CERTIFIES TO **BANK NAME** (THE "BANK"), WITH REFERENCE TO IRREVOCABLE LETTER OF CREDIT NO. [] (THE "LETTER OF CREDIT") ISSUED BY THE BANK AT THE REQUEST OF _____ (THE "APPLICANT") IN FAVOR OF THE BENEFICIARY, AS FOLLOWS:

WE HEREBY CERTIFY THAT _____ IS ENTITLED TO DRAW ON THIS STANDBY LETTER OF CREDIT NO. _____ UNDER THE PROVISIONS OF THE _____ CONTRACT DATED AS OF _____ BETWEEN _____ AND _____.

THEREFORE DEMAND IS HEREBY MADE UPON YOU FOR PAYMENT TO US OF \$_____ BY REMITTANCE TO OUR ACCOUNT NO. _____ AT [INSERT NAME OF BANK] {ABA ROUTING NUMBER}.

_____, AS BENEFICIARY

BY: _____
NAME: _____
TITLE: _____