



**CITY OF BOSTON
STANDARD CONTRACT DOCUMENT**

Form CM10

CONTRACT ID: 0000000000000000000068307

Parties

Contractor Legal Name: Direct Energy Services, LLC (and d/b/a):	City Department Name: Environment Department
Contractor Address: 910 Louisiana, Suite B200 Houston, TX 77002	City Department Head: Oliver Sellers-Garcia City Mailing Address: 1 City Hall Sqaure Boston, MA 02201
Contractor Vendor ID: 0000045804	City Billing Address: Auditing Department One City Hall Room M-4 Boston, MA 02201

Contract Details

Description/Scope of Services: (Attach supporting documentation) The COB, on behalf of the Consumers of the BCCE and acting by and through its Commissioner of the Environment, hereby solicits proposals from qualified retail competitive suppliers to provide all requirements power supply to the Citys Program. All electricity supply requirements and related services for the Boston Community Choice Electricity municipal aggregation program. Terms outlined in attached Electricity Service Agreement (ESA).	
Procurement Type: Energy/ Exempt under Ch. 30B, S 1(b)(32)	Contract Version: 0.00
Begin Date: December 01, 2025	End Date: November 30, 2027
Rate: (Attach details of all rates, units, and charges)	Not To Exceed Amt: \$ 0.01

Contract Signatures

AUDITING	VENDOR/CONTRACTOR	AWARDING AUTHORITY/OFFICIAL
APPROVED AS TO THE AVAILABILITY OF AN APPROPRIATION OR PURSUANT TO ARTICLE 12 OF THE GENERAL CONDITIONS	AGREES TO PROVIDE THE GOODS OR SERVICES AS INDICATED IN ACCORDANCE WITH THE ASSOCIATED CONTRACT DOCUMENTS	IT IS MY BELIEF THAT THERE IS LITTLE OR NO RISK OF DEFAULT OR UNSATISFACTORY PERFORMANCE BY THE VENDOR/CONTRACTOR
<div>SIGNATURE Marie Murray <small>Digitally signed by Marie Murray Date: 2025.09.04 10:42:19 -04'00'</small></div>	<div>SIGNATURE Kevin Cole <small>Digitally signed by Kevin Cole DN: cn=Kevin Cole, o=Kevin Cole, c=US, United States, e=Kevin.Cole@nrg.com Reason: I am approving this document Location: Date: 2025-08-30 09:01:04-00</small></div>	<div>SIGNATURE <i>Tyesha Rogers</i></div>
APPROVED APPROPRIATION IN THE AMOUNT OF: \$ 0.01		



CITY OF BOSTON

STANDARD CONTRACT GENERAL CONDITIONS

Form CM11

ARTICLE 1 -- DEFINITION OF TERMS:

1.1 The following terms in these Contract Documents shall be construed as follows:

1.1.1 "City" shall mean the City of Boston, Massachusetts.

1.1.2 "Contract" and "Contract Documents" shall include, in the following hierarchy of document precedence, as applicable: the City's Standard Contract Document; these Standard Contract General Conditions; the Invitations for Bids, Requests for Proposals, or other solicitations; the Contractor's responses including Contractor Certifications and Applications, excluding any language stricken by City as unacceptable and including any negotiated statements of work contemplated by the solicitation; and Performance Bonds, which documents are incorporated herein by reference.

1.1.3 "Contractor" shall mean the individual, partnership, corporation or other entity to which this Contract is awarded.

1.1.4 "Official" shall mean the awarding authority/officer acting on behalf of the City in the execution of the Contract.

ARTICLE 2 -- PERFORMANCE:

2.1 The Contractor shall conform to all determinations and directions, in accordance with provisions of this Contract, of the Official concerning all questions which may arise relating to the performance of services under this Contract.

2.2 The Contractor shall, upon written request of the Official, remove from City premises and replace all individuals in the Contractor's employ whom the Official determines to be disorderly, careless or incompetent or to be employed in violation of the terms of this Contract.

2.3 City is entitled to ownership and possession of all deliverables purchased or developed with Contract funds. All work papers, reports, questionnaires and other written materials prepared or collected by the Contractor in the course of completing the work to be performed under this Contract shall at all times be the exclusive property of the City. The Contractor shall not use such materials for any purposes other than the purpose of this Contract without the prior written consent of the Official. All Contractor proprietary rights shall be detailed in the Contract Documents.

2.4 Prior to beginning performance under this Contract, Contractor must receive a Purchase Order from City.

ARTICLE 3 -- ACCEPTANCE OF GOODS OR SERVICES:

3.1 Performance under this Contract shall include services rendered, obligations due, costs incurred, goods and deliverables provided and accepted by City. The City shall have a reasonable opportunity to inspect all goods and deliverables, services performed by, and work product of the Contractor, and accept or reject such goods, deliverables, services, or work product.

ARTICLE 4 -- TIME:

4.1 It is understood and agreed that Contractor's performance shall be timely and meet or exceed industry standards for the performance required.

ARTICLE 5 -- COMPENSATION:

5.1 The Contractor may, in the absence of a payment schedule, periodically submit to the Official invoices, itemizing goods, services, labor and expenses for which compensation is due and requesting payment for goods received or services rendered by the Contractor during the period covered by the invoice.

5.2 Thereupon the Official shall estimate the value of goods or services accepted by the City in accordance with the specific terms and conditions of a Contract, and City shall pay to the Contractor such amount less sums retained under the provisions of Article 8 of these General Conditions.

5.3 The City shall pay in full and complete compensation for goods received and accepted and services performed and accepted under this Contract in an amount not to exceed the amount shown on the face of this Contract paid in accordance with the rate indicated or in accordance with a prescribed schedule. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the City from all claims, liabilities or other obligations relating to the performance of a Contract.

5.4 In the event that this Contract provides for reimbursement by the City to the Contractor for travel or other expenses, the Contractor shall submit such proposed expenses to the Official for approval prior to the incurrence of such expenses, unless the Contract specifically provides otherwise, and all travel reimbursement shall be consistent with the City's Travel Policies and Procedures.

5.5 The Contractor shall furnish such information, estimate or vouchers relating to the goods or services or to documentation of labor or expenses as may be requested by the Official.

ARTICLE 6 -- RELATIONSHIP WITH THE CITY:

6.1 The Contractor is retained solely for the purposes of and to the extent set forth in this Contract. Contractor's relationship to the City during the term of this Contract shall be that of an independent Contractor. The Contractor shall

have no capacity to involve the City in any contract nor to incur any liability on the part of the City. The Contractor, its agents or employees shall not be considered as having the status or pension rights of an employee; provided that the Contractor shall be considered an employee for the purpose of General Laws c. 268A (the Conflict of Interest Law). The City shall not be liable for any personal injury to or death of the Contractor, its agents or employees.

6.2 Unless all the terms and conditions for the delivery or provision of goods or services by the Contractor to the City specified by this Contract are expressly set forth in a writing incorporated herein by reference, such delivery of goods or services shall require written approval of or direction by the Official prior to the incurrence of any liability by the City. The City has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract.

6.3 All alterations or additions, material or otherwise, to the terms and conditions of this Contract must be in writing and signed by the Official and Contractor and filed with the City Auditor. The City's Standard Contract Document and Standard Contract General Conditions shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, including contract forms, purchase orders, or invoices of the Contractor.

6.4 Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

ARTICLE 7 -- ASSUMPTION OF LOSS AND LIABILITY:

7.1 The Contractor shall pay and be exclusively responsible for all debts for labor and material contracted for by Contractor for the rental of any appliance or equipment hired by Contractor and/or for any expense incurred on account of services to be performed under this Contract.

7.2 The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all goods and deliverables, until possession, ownership and full legal title to the goods and deliverables are transferred to and accepted by the City.

7.3 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and assume the defense of the City, its officers, agents or employees, with counsel acceptable to City, which acceptance shall not be unreasonably withheld, from all liabilities, suits, claims, losses, and costs or any other damages against them or any of them arising from any act or omission of the Contractor, its agents, officers, employees, or subcontractors in any way connected with performance under this Contract.

ARTICLE 8 - REMEDIES OF THE CITY:

8.1 If the Contractor provides goods and/or services that do not comply with Contract specifications and requirements as reasonably determined by the Official, the Official may request that the Contractor refurnish services or provide substitute goods at no additional cost to the City until approved by the Official. If the Contractor shall fail to provide satisfactory goods or services, the Official, in the alternative, may make any reasonable purchase or Contract to purchase goods or services in substitution for those due from the Contractor. The City may deduct the cost of any substitute Contract or nonperformance of services together with incidental and consequential damages from the Contract price and shall withhold such damages from sums due or to become due to the Contractor. The City otherwise retains all rights and remedies at law or in equity.

8.2 If the damages sustained by the City as determined by the Official exceed sums due or to become due, the Contractor shall pay the difference to the City upon demand.

8.3 The Contractor shall not be liable for any damages sustained by the City due to the Contractor's failure to furnish goods or services under the terms of this Contract if such failure is in fact caused by the occurrence of a contingency the nonoccurrence of which was a basic assumption under which this Contract was made, including but not necessarily limited to a state of war, act of enemies, embargoes, expropriation or labor strike or any unanticipated federal, state, or municipal governmental regulation or order, provided that the Contractor has notified the Official in writing of such cause as soon as practicable.

8.4 The City may terminate this Contract for cause if the Contractor has breached any material term or condition and has not corrected the breach within a reasonable period of time after written notice from the City identifying the breach. This Contract may be terminated at any time for the convenience of the City at the option of the Official by delivering or mailing to the Contractor at the Contractor's business address a written notice of termination setting forth the date, not less than seven (7) days after the date of such delivery or mailing, when such termination shall be effective. In the event of such termination for convenience, the Contractor shall be compensated for services rendered to the effective date of said termination in accordance with the rates of compensation specified in this Contract. The parties agree that if City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

ARTICLE 9 -- REMEDIES OF CONTRACTOR:

9.1 If damages, other than loss on nonconforming services or on services not performed, are actually sustained by the Contractor due to any act or material omission for which the City is legally responsible, the City may allow a sum equal to

the amount of such damages sustained by the Contractor as determined by the Official in writing, provided the Contractor shall have delivered to the Official a detailed written statement of such damages and cause thereof within thirty (30) days after the act or material omission by the City.

ARTICLE 10 - PROHIBITION AGAINST ASSIGNMENT:

10.1 The Contractor shall not assign, delegate, subcontract or in any way transfer any interest in this Contract without prior written consent of the Official.

ARTICLE 11 - COMPLIANCE WITH LAWS AND PUBLIC POLICY:

11.1 This Contract is made subject to all laws of the Commonwealth of Massachusetts. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

11.2 The Contractor shall provide, at its sole expense, all necessary licenses, permits or other authorizations required by the City, the Commonwealth of Massachusetts or any other governmental agency with proper jurisdiction.

11.3 The Contractor shall where applicable take out and maintain during the term of this Contract such Worker's Compensation insurance as may be reasonably necessary to protect the Contractor from claims under General Laws c. 152 (the Worker's Compensation Law). The Contractor shall at all times maintain professional, liability, and other appropriate insurance as required by the solicitation or as otherwise required by City, but in no event less than the amount and type of insurance coverage sufficient to cover the performance.

11.4 The Contractor agrees and shall require any subcontractor to agree not to discriminate in connection with the performance of work under the Contract against any employee or applicant for employment because of sex, race, color, sexual orientation, gender identity or expression, marital status, parental status, ex-offender status, prior psychiatric treatment, military status, religious creed, disability, national origin, ancestry, source of income, or age, unless based upon a legally permissible and bona fide occupational qualification. The Contractor agrees and shall require any subcontractor to agree to post in conspicuous places notices to be provided by the Massachusetts Commission Against Discrimination, setting forth provisions of the Fair Employment Practice Law of the Commonwealth.

11.5 The Contractor's attention is called to General Laws c. 268A (the Conflict of Interest Law). The Contractor shall not act in collusion with any City officer, agent, or employee, nor shall the Contractor make gifts regarding this Contract or any other matter in which the City has a direct and substantial interest.

11.6 The Contractor shall keep himself fully informed of all City Ordinances and Regulations, and State and Federal laws, which in any manner affect the work herein specified. The Contractor shall at all times observe and comply with said ordinances, regulations or laws, and shall defend, hold harmless, and indemnify the City, its officers, agents and employees against any claim or liability arising from or based on the violations of such ordinances, regulations or laws, caused by the negligent actions or omissions of the Contractor, its agents, or employees.

11.7 In furtherance of the Mayor's Executive Order "Minority and Women Business Enterprise Development" dated December 31, 1987 and the Ordinance entitled "Promoting Minority and Women Owned Business Enterprises in the City of Boston" (Ordinances of 1987, Chapter 14, as amended), it is understood and agreed by the Contractor, and the Contractor by the execution of this Contract so certifies, as follows: (1) That the Contractor shall actively solicit bids for the subcontracting of goods and services from certified minority and women businesses; (2) That in reviewing substantially equal proposals the Contractor shall give additional consideration to the award of subcontracts to certified minority and women bidders.

11.8 The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the U.S. government, the Commonwealth of Massachusetts, or any of its subdivisions.

11.9 The Contractor certifies that neither it nor any of its subcontractors have been subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of G.L. c.149, c.151, or the Fair Labor Standards Act within three (3) years prior to the date of the Contract; or certifies that it has provided copies of any and all of the above to the Official prior to the date of the Contract and any required wage bond or insurance; and certifies that while the Contract is in effect, it will report any instance of the above to the Official within five (5) days of Contractor's receipt. The Contractor agrees and shall require any subcontractor to post in conspicuous places notices to be provided by the City, informing employees of the protections of applicable local, state, and federal law.

11.10 Contractor agrees that they shall comply fully with all state and federal laws and regulations regarding human trafficking and forced labor. Failure to do so will be considered a breach of this Contract.

11.11 If applicable, as determined by the Massachusetts Department of Labor Standards, the Contractor shall comply with the Massachusetts Prevailing Wage Law (M.G.L. c.149, s.26, -27H) for public works projects, which establishes minimum wage rates for workers on such projects. The Contractor shall comply and shall cause its subcontractors to comply with M.G.L. c.149, s.27B, which requires that a true and accurate record be kept of all persons employed on a project for which the prevailing wage rates are required. The Contractor shall, and shall cause its subcontractors to, submit weekly copies of their weekly payroll records to the City, to the extent the Prevailing Wage Law is applicable.

ARTICLE 12 -- AVAILABLE APPROPRIATION:

12.1 This Contract and payments hereunder are subject to the availability of an appropriation therefor. Any oral or written representations, commitments, or assurances made by the Official or any other City representatives are not binding. Contractors should verify funding prior to beginning performance.

12.2 If the Contract is funded under a grant with the Federal Government, it is being executed without further appropriation pursuant to General Laws c. 44, s.53A.

12.3 When the amount of the City Auditor's certification of available funds is less than the face amount of the Contract, the City shall not be liable for any claims or requests for payment by the Contractor which would cause total claims or payments under this Contract to exceed the amount so certified.

12.4 Unless otherwise expressly provided in a writing incorporated herein by reference, the amount certified by the City Auditor as available funds under this Contract may be increased or decreased by the Official with the written approval of such change by the City Auditor. In the event of any decrease in the amount certified, the Contractor shall be compensated for services rendered to the effective date of such reduction, in accordance with the rates of compensation specified in this Contract.

ARTICLE 13 -- RELEASE OF CITY ON FINAL PAYMENT:

13.1 Acceptance by the Contractor of payment from the City for final services under this Contract shall be deemed to release forever the City from all claims and liabilities, except those which the Contractor notifies the Official in writing within six (6) months after such payment.

ARTICLE 14 -- PUBLIC RECORDS AND ACCESS:

14.1 The Contractor shall provide full access to records related to performance and compliance to the City for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

ARTICLE 15 -- STATE TAXATION CERTIFICATION:

15.1 Pursuant to M.G.L. c. 62C, s. 49A, the Contractor certifies under penalties of perjury, that to the best of Contractor's knowledge and belief, Contractor has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support. (NOTE: The Taxpayer Identification Number will be furnished to the Massachusetts Department of Revenue to determine compliance with the above-referenced law).

ARTICLE 16 -- MONIES OWED TO THE CITY:

16.1 Pursuant to M.G.L. c. 60, s. 93, the Contractor agrees that the Collector/Treasurer of the City of Boston may withhold from amounts owing and payable to the Contractor under this Contract any sums owed to any department or agency of the City of Boston which remain wholly or partially unpaid. This shall include but not be limited to unpaid taxes and assessments, police details, and any other fees and charges until such sums owed have been paid in full, and the Collector/Treasurer may apply any amount owing and payable to the Contractor to satisfy any monies owed to the City.

ARTICLE 17 -- BID COLLUSION:

17.1 The Contractor certifies under penalties of perjury that his/her bid or proposal has been made and submitted in good faith and without collusion, fraud, or unfair trade practice with any other person. As used in this article, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals. Any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

ARTICLE 18 -- FORUM AND CHOICE OF LAW:

18.1 Any actions arising out of this Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Boston, Massachusetts which shall have exclusive jurisdiction thereof.

***** THIS PROCUREMENT IS TO BE ADVERTISED IN BOTH THE COMMONWEALTH OF MASSACHUSETTS' GOODS AND SERVICES BULLETIN AND THE CITY RECORD *****

**ADVERTISEMENT
CITY OF BOSTON**

Environment Department

REQUEST FOR PROPOSALS TO PROVIDE THE FOLLOWING SERVICES AND/OR SUPPLIES:

The COB, on behalf of the Consumers of the BCCE and acting by and through its Commissioner of the Environment, hereby solicits proposals from qualified retail competitive suppliers to provide all requirements power supply to the City's Program.

The City of Boston ("The City"), acting by its Commissioner ("The Official"), requests proposals for the services and/or supplies described above, as particularly set forth in the Request for Proposals, which may be obtained from the City's procurement website and Supplier Portal (<http://boston.gov/procurement>) under Event ID EV00016301 or at 1 City Hall Square, Boston, MA 02201.

Note: For information specific to this RFP, please contact Christopher Kramer at christopher.kramer@boston.gov or 617-635-2518.

Request for Proposals shall be available on July 21, 2025 until the proposal filing deadline. All proposals shall be filed no later than August 08, 2025 at 02:00 PM.

The attention of all proposers is directed to the provisions of the Request for Proposals and contract documents, specifically to the requirements for bid deposits, insurance and performance bonds, as may be applicable.

The City reserves the right to reject any and all bids, or any part or parts thereof, and to award a contract as the Official deems to be in the best interests of the City. This contract shall be subject to the availability of an appropriation therefore. The maximum time for proposal acceptance by the City after the opening of proposals shall be 90 days. The award of this contract shall be subject to the approval of the Mayor of Boston.

Oliver Sellers-Garcia
Commissioner

ELECTRIC SERVICE AGREEMENT

BETWEEN

DIRECT ENERGY SERVICES, LLC

AND

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

This Electric Service Agreement (“ESA”) with a reference date of **September 5, 2025** is entered into by and between **Direct Energy Services, LLC**, a Delaware limited liability company duly authorized to conduct business in the Commonwealth of Massachusetts (“Supplier”), and the **City of Boston, Massachusetts** (the “City”) on behalf of the Consumers of the 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; and

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

WHEREAS, the City received approval of its Plan from the Massachusetts Department of Public Utilities (the “Department”) on July 22, 2020 in D.P.U. 19-65, as may be amended from time to time (the “Plan”); and

WHEREAS, the City may offer more than one Product under the Plan, and the Plan allows the City to include a Municipal Services Fee in Program Retail Prices; and

WHEREAS, Supplier desires to provide All-Requirements Power Supply as described in the Products set forth in Appendix A to consumers located within the City and provide the administrative support necessary for the Program, pursuant to the terms and conditions of the City's Program, the Plan and this ESA; 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

Capitalized terms that are used but not separately defined in the body of this ESA, including the Exhibits and Appendices hereto, shall be defined as set forth in this Article 1. Words defined in this Article 1 shall, however, be given their common and ordinary meanings when they appear without capitalization in the body of this ESA.

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 any Price and Term Appendix, necessary to provide firm power supply to Participating Consumers at the Point of Delivery.

Bankruptcy – With respect to a Party, when 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 Department, as amended or promulgated, as the case may be, from time to time.

Business Day – Any day between the period of 8:00 a.m. and ending at 5:00 p.m. Eastern Prevailing Time, except Saturday, Sunday and any day which is a legal holiday or a day on which federal banking institutions in Boston, Massachusetts are authorized by law 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 competitive 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 in its performance under this ESA; or
- d) if any new or additional charges, fees, and/or obligations, including without limitation transmission or capacity requirements or charges, are imposed on the Supplier in its performance of this ESA by (i) ISO-NE related to a FERC approved change to the ISO-NE's Tariff issued on or after the Effective Date, or (ii) any Governmental Authority or Local Distributor, excluding, however, periodic changes to the purchase of receivable discount rate and timing of payments filed by the Local Distributor and approved by the Department, or any specifically identified category of pending, proposed, or anticipated new costs or credits defined in any Price and Term Appendix as being included in Retail Prices; or
- e) 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 directly 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 Services Fee – The dollar amount per kWh as set forth in any Price and Term Appendix.

Consumer Data – The identifying information of all Eligible Consumers and Participating Consumers made available to the Supplier resulting from the execution of this ESA, including but not limited to Local Distributor account numbers, billing names, billing addresses, service addresses, telephone numbers, kWh usage, and ICAP Tag Values.

CPG – Colonial Power Group, Inc., the consultant hired by the City to develop, implement, and administer the Program consistent with the terms of the Plan and this ESA, 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.

Delivery Term End Date – The ending month of a Delivery Term as set out in any Price and Term Appendix.

Delivery Term Start Date – The starting month of a Delivery Term as set out in any Price and Term Appendix.

Department – 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. 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 renewable energy 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 renewable energy product that prohibits switching to a competitive supplier; and (c) consumers receiving competitive supply service.

ESA – This Electric Service Agreement including without limitation, the City’s General Conditions, the appendices hereto, which are incorporated by reference, and any amendments thereto entered into by the Parties after the Effective Date.

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

FERC – The Federal Energy Regulatory Commission or any successor federal agency.

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 discretionary acts or 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 5.6.3 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.

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.

Initial Eligible Consumers – Residential, commercial, industrial, municipal, or other consumers of electricity that are Eligible Consumers as of the Effective Date.

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.

ISO-NE Tariff - The ISO New England Inc. Transmission, Markets, and Services Tariff, as on file with the FERC and as amended from time to time, which for the sake of clarity, includes Market Rule 1, which governs the operation of New England’s wholesale electricity markets and includes detailed information on pricing, scheduling, offering, bidding, settlement, and other procedures related to the purchase and sale of electricity.

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

Large Industrial Consumer – A consumer account that meets either of the following: (i) an ICAP Tag Value assigned by the Local Distributor of 400kW or higher, or (ii) projected usage of more than 2,000,000kWh/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.

Load Asset – Shall have the meaning as defined in the ISO-NE Tariff.

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 billing period or cycle.

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

Municipal Services Fee – A volumetric fee expressed in \$/kWh, set out in any Price and Term Appendix if applicable, that may be assessed by the City and that the City may, at its sole discretion, direct the Supplier to (i) include in Retail Prices, and (ii) collect and remit to the City any funds resulting from such fee pursuant to Article 18.10 of this ESA.

NEPOOL – The New England Power Pool.

NEPOOL GIS – The New England Generation Information System that accounts for generation attributes of electricity consumed within New England, operated by NEPOOL subject and pursuant to the Participants Agreement and NEPOOL GIS Operating Rules each as may be amended from time to time.

New Eligible 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 on or 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 plan as adopted or amended by the City from time to time, and approved by the Department, including any amendments thereto, to aggregate electricity consumers for the primary purpose of negotiating beneficial rates for the supply of electricity for such consumers pursuant to the Program.

Point of Delivery – The point of interconnection between ISO-NE 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 under this ESA, and which amongst other terms sets forth the prices and terms for the provision of All-Requirements Power Supply for consumers in each Rate Class.

Product – A unique All-Requirements Power Supply option offered to Eligible Consumers at a specific price and containing a specific combination of energy services and attributes 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 – Consumer groupings consistent with definitions created by the Local Distributor and recognized by the Department.

Related Documents –The executed Form CM-10, the City's standard terms and conditions, Form CM-11, executed Price and Term Appendices, Letters of Credit, Parent Guarantees, any other appendices to this ESA, any subsequent appendices or addenda to this ESA agreed to and executed by the Parties, 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. All such RECs will be created and recorded by the NEPOOL GIS or the renewable energy certificate tracking system of the relevant ISO/RTO where such RECs are generated and retired, as applicable or be certified by a third party.

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 Voluntary Renewable Energy Certificates included in the optional Products, if applicable, 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) established by the City and set forth in any 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.

SMART Incentive Agreement – Any agreement between the City and a solar project developer under which the solar project developer pays or directs a portion of SMART Incentive Payments or other consideration to the Supplier for purposes of funding a reduced price for Low-Income Consumers that are Participating Consumers.

SMART Incentive Payments – SMART Program incentive payments for the benefit of Low-Income Consumers who are Participating Consumers.

SMART Program - Collectively, and as amended from time to time, the Solar Massachusetts Renewable Target (SMART) Program regulation, 225 CMR 20.00 *et seq.*, orders and guidelines

issued by the Massachusetts Department of Energy Resources, and the associated tariff(s) of the Local Distributor.

Supplier's Credit Support Provider – NRG Energy, Inc., a corporation organized in the state of Delaware.

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>
\$50,000,000	Ba2 or above	BB or above
\$0	Ba3 or below	BB- or below

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

Supplier's Letter of Credit Requirement – 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.

Voluntary Renewable Energy Certificates ("Voluntary RECs") – Electric energy, or RECs certifying electric energy, generated by equipment or facilities including solar power, 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 as of the Effective Date of this ESA or that may be otherwise added and incorporated into Products as a voluntary REC purchase as set forth in each Price and Term Appendix.

ARTICLE 2 RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply 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 recognizes that this ESA does not guarantee that any individual Eligible Consumer will be served by the Supplier. Notwithstanding any provision of this ESA to the contrary, if a new Rate Class is added to the Program, to the extent such Rate Class does not include consumers 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 Rate Class either with (i) Supplier or (ii) an alternate supplier under its own Load Asset.

The City authorizes Supplier on behalf of the City and any Participating Consumers to take any and all actions as Supplier determines may be necessary to permit switching and enrollment in accordance with this ESA, Department regulations, and Supplier's and the Local Distributor's rules and terms hereof. In accordance with Article 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless the consumer exercises its right to opt-out of the Program.

The City shall specifically authorize the Local Distributor to provide, and Supplier shall have the right to obtain and utilize as required, all Consumer Data as is reasonably available from the Local Distributor, and which is necessary for Supplier to perform its obligations under this ESA. If requested by Supplier, the City agrees to use Commercially Reasonable efforts, at Supplier's cost, to assist Supplier in obtaining Consumer Data, including, without limitation, assisting Supplier in obtaining permission from Eligible Consumers and/or the Department, 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 Department to receive information regarding other Local Distributor consumers, including but not limited to New Eligible Consumers, the City shall authorize the Local Distributor to provide such information to Supplier, and Supplier shall have the right to obtain and use such information as is reasonably available from the Local Distributor to support City-directed consumer awareness and outreach activities pursuant to Article 3.4.

This ESA is a Forward Contract and Supplier and the City are Forward Contract Merchants.

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 but not obligated 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 or beneficiaries under this ESA and shall be deemed to 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 but not the obligation 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 FERC, the Department, Massachusetts Attorney General, and the Massachusetts Department of Energy Resources 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 Supplier, or, with respect to (c) and (d) below, Supplier's affiliate or contracted wholesale power marketer, fulfilling the following requirements:

- a) maintain Supplier's competitive supplier's license from the Department (as such term is defined in the Local Distributor's Terms and Conditions for Competitive 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 the Local Distributor; and
- f) provide all other documentation reasonably required by the Local Distributor for Supplier to carry out its obligations under this ESA.

If Supplier has not fulfilled all such requirements by the Delivery Term Start Date, the City may terminate this ESA without any liability. Any noncompliance with such requirements after the Effective Date shall be subject to Articles 4.2 and 4.4.

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 Department, the Local Distributor and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electricity 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 APPLICABILITY OF CONSUMER NOTIFICATION REQUIREMENTS

The notification requirements set forth in Article 3.3 shall apply only to Opt-Out Notices mailed to New Eligible Consumers after the Delivery Term Start Date, unless a Price and Term Appendix otherwise expressly obligates Supplier to conduct an opt-out mailing prior to the Delivery Term Start Date and in a timeframe necessary for service to begin for Initial Eligible and New Eligible Consumers on the Delivery Term Start Date.

Supplier will conduct opt-out mailings to New Eligible Consumers in accordance with the Sweep Schedule set out in the Price and Term Appendix (unless otherwise agreed to by the Parties).

3.3 NOTIFICATION TO CONSUMERS OF OPT-OUT RIGHTS

Consistent with the requirements of any applicable Governmental Rules, the City will request or cause CPG to request and obtain from the Local Distributor and provide to Supplier the account number, service and billing address, and other pertinent contact information of all Initial Eligible Consumers and New Eligible Consumers, as applicable. However, CPG shall exclude any individual Large Industrial New Eligible Consumers from the list of New Eligible Consumer accounts it provides to the Supplier. Supplier shall notify each such Eligible Consumer (i) of the date, expressed as the meter read date for a given month, on which such Eligible Consumers will be automatically enrolled in the Program, and (ii) that Supplier will be providing All-Requirements Power Supply to such Eligible 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 Department (“Approved Opt-Out Notice”), and Supplier shall promptly provide its reasonable comments and suggestions on such form with the understanding that under current Department practice the final form is subject to Department approval. Supplier shall mail only such Approved Opt-Out Notice to each such Initial Eligible Consumer and New Eligible Consumer, as applicable, in a Commercially Reasonable timeframe as directed by the City or CPG and in compliance with Department directives, but not less than the number of days set forth in the Plan, currently thirty-seven (37) days prior to the date of automatic enrollment as required by the Department. The Approved Opt-Out Notice shall: (i) prominently state all charges to be assessed

by 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 Initial Eligible Consumer and New Eligible 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 any 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 different competitive supplier without paying a fee or penalty to Supplier. An Initial Eligible Consumer or New Eligible Consumer will not be automatically enrolled when an Approved Opt-Out Notice is returned as undeliverable. The City agrees to take such further actions as Supplier may reasonably request, and at Supplier's cost, in connection with Supplier's performance under this Article 3.3.

Supplier is responsible for all costs associated with the City's efforts to provide consumer notification to all Initial Eligible and New Eligible Consumers under this Article 3.3. Such costs include, but are not limited to, print materials, printing, copying, mailing, postage, and language translation services. In the event the City or CPG is also expected to incur any similar such costs in support of the foregoing activities ("Support Costs"), the City or CPG, as applicable, will provide Supplier with advance notice thereof prior to incurring such Support Costs. The total for all Support Costs in any given calendar year shall not exceed the "Support Costs Cap" set out in any Price Term Appendix. Supplier shall coordinate with and reimburse the City or CPG for all Commercially Reasonable and actual, documented Support Costs. Supplier will maintain a complete list of opt-outs throughout the Term of this ESA whether received prior to the initial enrollment or after accounts have been enrolled. Supplier will make this opt-out list available to the City or CPG upon request.

In providing the notifications set forth in this Article 3.3, and in otherwise conducting the activities in Article 3.5 below, Supplier must rely upon information provided to it by the City or CPG for the purpose of performing such obligations. Supplier will not be responsible for any errors or omissions in connection with its notification of Initial Eligible Consumers or New Eligible Consumers resulting from errors or omissions in the information provided to it by the City or CPG. For clarification purposes, all mailing lists of Initial Eligible and/or New Eligible Consumers to receive notices pursuant to this Article 3.3 shall be requested by the City or CPG from the Local Distributor and shared with Supplier. The City and CPG acknowledge that Supplier shall not be responsible for requesting mail listings directly from the Local Distributor. Supplier shall not be responsible for delays in sending notifications to Initial Eligible Consumers, New Eligible Consumers, or Participating Consumers to the extent such delays are caused by delays in receiving information, including the form of communication, from the City or CPG.

3.4 CONSUMER AWARENESS

3.4.1 Consumer Notification of New Supplier - In the event the Program has Participating Consumers as of the Effective Date of this ESA and the Supplier is not the current supplier of the Program, then prior to the Supplier's initial enrollment of any consumer accounts on the Delivery Term Start Date, CPG or the City will provide to Supplier the Local Distributor account number, service address, 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 Delivery Term Start 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 provide such notice to each Participating Consumer in a Commercially Reasonable timeframe and manner as directed by the City or CPG. 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.

3.4.2 Supplier or CPG Consumer Awareness Activities - Provided all Parties mutually agree on the content and method, Supplier or CPG may each conduct consumer awareness efforts at such party's sole expense. Any such efforts must be consistent with the Education Plan included in the Plan.

3.4.3 City Consumer Awareness Activities –Supplier shall be responsible for the costs associated with City-directed consumer awareness efforts but only if such efforts and the scope thereof are detailed and explicitly delegated to Supplier in any Request for Proposals for competitive electric supply services issued in connection with this ESA and also expressly set out in any Price and Term Appendix (“Program Promotions”). Such Program Promotions may include enhancements to the City’s website, 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. Supplier will not be responsible for the costs of any promotion(s) of the Program that is not a Program Promotion included in the Request for Proposal and Price and Term Appendix. The City may also 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 in any given calendar year shall not exceed the “Program Promotions Cap” set out in any Price Term Appendix. Further, the City may, in its discretion, adjust the Retail Price(s) 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.

3.5 ENROLLMENT

The enrollment procedures set out in this Article 3.5 are also summarized in Exhibit A to this ESA. However, in the event of a conflict between this Article 3.5 and Exhibit A, the terms in this Article 3.5 shall govern. Supplier shall perform any consumer enrollments pursuant to this Article 3.5 in accordance with applicable Local Distributor rules.

3.5.1 Initial Eligible Consumers – If applicable pursuant to Article 3.2, CPG or the City shall provide Supplier with the list of Initial Eligible Consumers, as well as such Initial Eligible Consumers’ service and billing addresses, and any other related information the Parties agree is necessary, in sufficient time for Supplier to commence All-Requirements Power Supply as of the Delivery Term Start Date.

3.5.2 Participating Consumers - If applicable pursuant to Article 3.4, 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 related information the Parties agree is necessary, in sufficient time for Supplier to commence All-Requirements Power Supply as of the Delivery Term Start 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 Governmental Rules.

3.5.3 New Eligible Consumers - New Eligible Consumers (a) who are provided notice, and (b) elect not to opt-out of the Program, each as provided in Article 3.3, will be automatically enrolled by Supplier in the Program at the Retail Price for the standard Product in accordance with the Sweep Schedule set out in the Price and Term Appendix.

3.5.4 Eligible Consumers that Previously Opted Out - At any time during the Term of 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 enrolled in the Program. Supplier will provide All-Requirements Power Supply to such Eligible Consumers at the Retail Price applicable for the Product selected.

3.5.5 Eligible Consumers Previously Served by Third Parties - Supplier agrees that, with the exception of Large Industrial consumers, consumers that are being served or were previously served under third-party competitive supply agreements may affirmatively opt-in by requesting to be enrolled into the Program and receive All-Requirements Power Supply at the Retail Price applicable for the Product selected when such agreements terminate or are otherwise completed.

3.5.6 Large Industrial Consumers – Large Industrial consumers that (i) are New Eligible Consumers, (ii) previously opted out of the Program, or (iii) are being served or were previously served under third-party competitive supply, may request to be enrolled in the Program and Supplier shall offer to provide All-Requirements Power Supply to such Large Industrial consumers based on the then market rate as determined by Supplier in its sole discretion for the Product selected. Such offer shall be consistent with all terms of this ESA, including but not limited to the consumer's ability to opt-out of the Program at any time without penalty. Prior to enrollment, Supplier shall promptly provide written notice to CPG if any Large Industrial Eligible Consumer accepts such market rate offer.

ARTICLE 4 TERM OF AGREEMENT 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 for any Delivery Term shall commence on the Delivery Term Start Date, and shall terminate on the Delivery Term End Date, each as set out in a Price and Term Appendix, unless terminated earlier under Article 4.2 below ("Term"); provided further, however, Supplier will only begin service to a Participating Consumer after such Participating Consumer has been enrolled by Supplier and the Participating Consumer has been switched by the Local Distributor to Supplier in accordance with all Governmental Rules. It may take up to two

billing cycles for the enrollment with Supplier to take effect. Supplier is not responsible for any such delay, or any failure or delay in enrolling any Participating Consumer caused by the Local Distributor. The City shall provide such cooperation, assistance, documents, authorizations, instruments and other information as reasonably requested by Supplier to permit the enrollment and servicing of Participating Consumers in the Program.

4.2 TERMINATION

This ESA may be terminated for the following reasons upon written notice:

- a) by the City or Supplier if either Party fails pursuant to Article 4.4 to cure any breach of any material provision of, or obligation under, this ESA (including, but not limited to, Article 5.6.2 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 Supplier is in Bankruptcy as that term is defined in this ESA, 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 Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction or if the Department exercises any lawful jurisdiction and invalidates or disapproves this ESA in whole or in significant part; or
- d) by the City in the event of the failure of Supplier to supply All-Requirements Power Supply to Participating Consumers; provided, however, that the City shall not be permitted to terminate this ESA if Supplier's failure to provide or arrange All-Requirements Power Supply, through no fault of Supplier, is a direct result of a Force Majeure or, to the extent not qualifying as Force Majeure, actions or non-actions by any transmission service provider, the Local Distributor, the City, CPG, the ISO-NE, or a Governmental Authority.

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. Supplier shall reasonably cooperate in good faith 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 Supplier's right to collect all monies due for services rendered, including any outstanding Monthly Distributions and except as otherwise expressly provided in this ESA. It may take up to two billing cycles to transfer Participating Consumers to a new competitive supplier or the Local Distributor and Supplier is entitled to all payment for All-Requirements Power Supply provided whether before or after the date of termination. The City shall require any successor competitive supplier to make Commercially Reasonable efforts to switch Participating Consumers away from Supplier and to its own service upon the Delivery Term End Date. Supplier is permitted to cause the Local

Distributor to drop the accounts of any Participating Consumers which are not switched or dropped by the Delivery Term End Date.

4.4 EVENT OF DEFAULT

Notwithstanding any other provision to the contrary herein, the Parties agree to the following:

- a) it will be an Event of Default with respect to either Party if:
 - (i) a Party fails, pursuant to Article 4.2(a), to cure a breach of any material provision of, or obligation under, this ESA, including but not limited to the provisions of Article 6.
 - (ii) a Party becomes Bankrupt.
 - (iii) a Party seeks to terminate this ESA except as expressly authorized in this ESA, including pursuant to Article 4.2.
- b) it will be an Event of Default with respect to Supplier if:
 - (i) Supplier fails to provide All-Requirements Supply as set forth in and subject to Article 4.2(d).
 - (ii) 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.
- c) it will be an Event of Default with respect to the City if:
 - (i) the City suspends or terminates the Program during the Term, except where such suspension or termination is required by Governmental Rule.
 - (ii) the City fails to maintain any required Minimum Balance or make Monthly Distributions as required in accordance with Article 5.4.2 provided that Supplier has first fully exercised its remedies under Article 5.4.2(f).

4.5 REMEDIES AND SPECIFIC PERFORMANCE

4.5.1 General - Subject to the limitations set forth in Article 18.18 below and this Article 4, the City and 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.

4.5.2 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 Supplier has paid in full all of its obligations that are then due ("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 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. 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.

4.5.3 Supplier's Rights and Remedies - Upon an Event of Default by the City, the Supplier shall be entitled to specific performance of this ESA as its sole remedy. The Parties acknowledge and agree that because monetary damages are not available to Supplier under this ESA, there is no remedy at law adequate to compensate Supplier for the City's actions as described in Article 4.4(a) and (c) and further agree that Supplier may suffer irreparable harm as a result.

4.6 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 by executing an updated Price and Term Appendix. Upon any such extension of this ESA, this ESA shall continue to be in effect, and all provisions of the ESA as amended 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

Supplier agrees and covenants to perform each of the following obligations during the term of this ESA.

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

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

5.2 CUSTOMER SERVICE ACCESS

Supplier shall take reasonable measures to provide, or cause to be provided, certain customer services to Participating Consumers and Eligible Consumers. Such services shall be reasonably accessible to Participating Consumers, shall allow Participating Consumers and Eligible Consumers to transact business they may have with Supplier, and shall serve as a communications liaison among the Participating Consumers, the City, CPG, and the Local Distributor. A toll-free telephone number shall be established by Supplier on or before the Effective Date and shall be available for Participating Consumers and Eligible 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. All incoming calls received by Supplier's call center shall be answered by the third ring, average hold times after auto-answer shall not exceed two minutes, and once a call is answered by an agent such caller shall not experience a subsequent hold time longer than two minutes. 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 11 languages on the City's language access document, as

approved by the Department. 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) (if such individual authorization is required by law), Supplier shall, during normal business hours (as set forth in Article 5.2), respond promptly and without charge 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 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 Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of the Department 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. To the extent the ESA requires Voluntary RECs to be sourced from resources that are tracked within the NEPOOL GIS, Supplier shall create and manage either a NEPOOL GIS 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 Voluntary RECs, if any (“Program GIS Account”), but only if a requirement for a Program GIS Account is explicitly set out in any Request for Proposals for competitive electric supply services in connection with this ESA and set forth in the applicable Price and Term Appendix to this ESA. Regardless of whether Supplier is required to establish a Program GIS Account, Supplier nonetheless shall be required to provide documentation satisfactory to the City demonstrating that Supplier met all voluntary renewable requirements of Products containing Voluntary RECs. Supplier shall provide such documentation or copies of detailed reports from the Program 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 Voluntary REC 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 Voluntary REC obligations as follows: any renewable energy acquired for the Program, either by purchasing of RECs 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 Voluntary REC obligations from sources which do not produce greenhouse gas emissions, and a preference shall be given to

new projects. 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 Voluntary REC obligations.

5.4.2 Alternative Low-Income Consumer Pricing

Subject to the rules, regulations, and approvals of any applicable Governmental Authorities, the City may from time to time enter into SMART Incentive Agreements for the purpose of obtaining and accumulating SMART Incentive Payments that it intends to use to reduce the Retail Price charged to Low-Income Consumers. If it enters into such agreements, the City may direct in writing the Supplier to set the Retail Price(s) for all Low-Income Consumers to reflect a specific \$/kWh price discount (the “Low-Income Consumer Discount”) as compared to the Residential Retail Price(s) then in effect. Supplier shall be reimbursed for all applied discounts as set forth below. Notwithstanding anything to the contrary in this Agreement, within ten (10) Business Days after the Supplier has received the final Monthly Distribution (as defined below), all discounts made and reimbursements received in connection with such Monthly Distribution shall be subject to a final true-up by any Party. For sake of clarity, the Supplier is not liable for any calculations of the Low-Income Consumer Discount.

- 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 the 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 Distribution Reports for alternative or cumulative time periods within the Delivery Term.
- b) No later than five (5) Business Days following receipt of the Distribution Report, the City or CPG will notify the Supplier in writing, accompanied by supporting documentation 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”). The Parties agree that upon resolution of a dispute over the Low-Income Consumer Consumption information payment shall be made to Supplier within five (5) Business Days of such resolution.

- d) During the Delivery Term when providing a Low-Income Consumer Discount, the City shall direct CPG to establish and maintain a bank account or bank subaccount specific to this ESA (the “Payment Account”) that shall maintain an account balance of no less than three 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 and provide reasonable evidence of such 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 or caused payment to be made to the Supplier by the tenth (10th) Business Day (“Payment Default”), the City or CPG shall immediately cure such Payment Default without any additional notice from Supplier. In the event the City or CPG fails to cure such Payment Default on the third (3rd) Business Day after such default and without any prior notice to the City or CPG, Supplier may promptly recoup the balance owed by deducting such outstanding amounts from the amount that the Supplier owes to CPG for its Consultant Services Fee pursuant to as set forth in Article 18.10 and the Price and Term Appendix of this ESA (“Stop Gap Funding”). CPG shall provide notice to the City of any Payment Default, with copy to the Supplier. In the event the Supplier relies on Stop Gap Funding, CPG shall include in the next immediate subsequent Monthly Distribution from the Payment Account an amount equal to the Stop Gap Funding. The Supplier shall reimburse CPG an amount equal to the Stop Gap Funding within five (5) Business Days or receipt of such Monthly Distribution if the Payment Default has been cured in its entirety.
- f) The Parties agree that the City’s and CPG’s obligation to maintain the Minimum Balance and make payment of all Monthly Distributions pursuant to this Article 5.4.2 are material provisions of this ESA and failure of the City and CPG to meet their obligations under this Article 5.4.2 shall be a material breach and an Event of Default pursuant to Article 4 of this ESA. If the City or CPG fails to maintain the Minimum Balance or in the event of two consecutive Payment Defaults, the Supplier may, at its sole discretion, either reduce or remove the Low-Income Consumer Discount and the City or CPG will have ten (10) Business Days to cure such Payment Default or the Supplier shall be permitted to initiate and recoup such amounts through the Stop Gap Funding process described above.
- g) The Supplier shall use Commercially Reasonable efforts to 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 Eligible Consumers as described in Article 3.3, and through direct consumer opt-in requests. Application of the Low-Income Consumer Discount rate may take 1 to 2 billing cycles once the Supplier receives information that a consumer is classified as a Low-Income Consumer by the Local Distributor.
- 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, with such direction to be given in writing and in

advance by not less than 25 days. Each Party shall execute an amended Price and Term Appendix as soon as reasonably possible following such notice and Supplier shall not make any such change until an applicable amendment has been executed. Notwithstanding anything to the contrary in this ESA, a fully executed amendment arising from or in connection with this paragraph must be received by the Supplier no less than 25 days prior to the first day of the calendar month the rate change is intended to go into effect and such rate change shall be subject to Local Distributor rate administration limitations. The 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.

- i) The City or CPG shall notify the Supplier in writing upon learning of any events of outage or material reduction in output from the production facilities associated with the SMART Incentive Agreements. The City or CPG shall advise the extent such outages or reductions in output are expected to impact the funds available and necessary for the Parties to carry out their responsibilities pursuant to this Article 5.4.2. The Parties will work diligently and in good faith to determine adjustments, if any, to the Low-Income Consumer Discount in response to such extended periods of outage or material reduction events.
- j) Notwithstanding anything to the contrary in this ESA and for greater clarity, the applicability of this Article 5.4.2 is contingent upon any necessary prior Department approval.

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, for whatever reason and through no fault of Supplier, physically disconnects, curtails, or reduces service to Participating Consumers.

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 pursuant to the Retail Prices and terms as set out in the then effective Price and Term Appendix. Supplier may not deny service to an Eligible Consumer for failure to pay the bills of the Local Distributor or other competitive supplier. 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 Article 7.4.2 if Supplier has not otherwise been compensated by the Local Distributor pursuant to its Competitive Electric Supplier Service Agreement with the Local Distributor.

5.6 CONSUMER DATA AND COMMUNICATIONS WITH CONSUMERS

5.6.1 Limitations

Notwithstanding anything to the contrary in this ESA, including this Article 5.6, Supplier may only communicate with Participating Consumers and/or use the lists of Eligible

Consumers and Participating Consumers provided by the City or CPG to perform its obligations in accordance with this ESA, including to send City-approved educational materials, opt-out notices, or other communications essential to the operation of the Program consistent with the terms of this ESA. Such lists may not be used by Supplier to market any additional products or services to Eligible Consumers or Participating Consumers. The City shall also be responsible for securing any required approvals for communications with Eligible Consumers or Participating Consumers, including any necessary review by the Department.

5.6.2 Ownership and Use of Consumer Data

Supplier acknowledges that, as between the Parties, the City shall have exclusive ownership of all right, title, and interest in and to all Consumer Data. Supplier shall use Consumer Data solely to provide All-Requirements Power Supply to Participating Consumers and to render other services required or permitted under this ESA and Supplier shall treat Consumer Data as confidential information. Any other use of Consumer Data without the prior written consent of the City is strictly prohibited. Supplier shall maintain all Consumer Data in electronic format. Unless restricted by applicable Governmental Rules, Supplier will make Consumer Data available to the City or CPG upon request. The City shall be responsible for CPG's possession and use of Consumer Data. Notwithstanding anything in Article 16 to the contrary, Supplier may share Consumer Data with affiliates and third-party vendors as reasonably necessary to accommodate Supplier's provision of All-Requirements Power Supply, other rights, or performance obligations pursuant to this ESA (including, without limitation, collection of receivables), provided that Supplier will inform any such vendor in writing of the confidential nature of Consumer Data and the restrictions set forth in this Article 5.6 and elsewhere in this ESA. In the event the City has chosen a new supplier for its Program, then prior to the Delivery Term End Date and at a time determined by the City, Supplier shall provide a copy of the Participating 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, such as the new supplier, which the City represents will have been authorized to receive such data; provided that Supplier will provide such data on an "as-is" basis and without warranty of any kind. SUPPLIER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES PERTAINING TO SUCH DATA, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. A material violation of this Article 5.6.2 by Supplier, its affiliates or third-party vendors shall be grounds for termination under Article 4.2(a). Supplier agrees such a violation of this Article 5.6.2 will constitute irreparable harm.

5.6.3 Approval of General Communications

Prior to sending any direct mail, electronic mail, or other similar 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 such communication is essential to the operation of the Program pursuant to Article 5.6.1. The City shall have the

right to object to such General Communications and suggest revisions, provided, however, that the City's approval shall not be unreasonably withheld or delayed. 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 Supplier shall not send such rejected or excluded General Communication; provided, however, any such right of rejection or exclusion shall not apply to Supplier's notice to exercise or enforce its rights under this ESA, including but not limited to any notice of Force Majeure, Change in Law, or any communication required by the Department or any other Governmental Authority.

5.6.4 Direct Marketing

Supplier agrees not to engage in any direct marketing of a new product or service to any Participating Consumer that relies upon Supplier's unique knowledge of, or access to, Participating Consumers gained as a direct result of this ESA unless first approved in writing by the City or CPG. Any new product or service that Supplier and/or the City wish to make available to Participating Consumers pursuant to this Article 5.6.4 is subject to Department approval. For the purposes of this provision, "direct marketing" shall include, but not be limited to, any outbound sales-based telephone call, mailing, or electronic mail from Supplier to a Participating Consumer through which Supplier markets products or services other than those being provided pursuant to this ESA. Broad-based programs of Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing."

5.6.5 Participating Consumer Lists

To the extent not prohibited by any Governmental Rule, Supplier shall provide a list of the Participating Consumers being served by Supplier to the City or CPG upon written request, including such reasonable identifying and usage 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.

5.7 COMPLIANCE WITH LAWS AND STANDARDS

The Parties shall promptly and fully comply with all existing and future Governmental Rules as applicable to the activities covered by this ESA, including, as to Supplier, all applicable Renewable Energy Standards.

5.8 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 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 Supplier an estimate of such costs. Upon receiving the estimate, Supplier shall determine if it will continue to request the City's assistance, and if so, Supplier shall reimburse the City for all actual 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 (in addition to fulfilling its obligations under this ESA) is to set the terms and conditions under which All-Requirements Power Supply will be provided by Supplier under this ESA and to enforce Supplier's compliance with those terms and conditions; and, notwithstanding anything to the contrary herein, the City is responsible, in the manner set forth in Article 5.4.2, for any payments due to Supplier in accordance with Article 5.4.2 and/or responsible for causing Consultant to meet its obligations under the ESA, including to maintain the Payment Account and to issue the Monthly Distributions to Supplier in accordance with Article 5.4.2. 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 Department, 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. All Participating Consumers are bound as principals and beneficiaries to this ESA subject to the provisions of M.G.L. c. 164, § 134 and Department rules and practice. 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 Supplier relating to the delivery or supply of All-Requirements Power Supply.

ARTICLE 7 PRICES AND SERVICES; BILLING

7.1 RETAIL 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. All Retail Prices are established by the City in its sole discretion after first consulting with Supplier, and shall include the following components for each Product, unless otherwise mutually agreed to by the Parties:

- a) The All-Requirements Power Supply prices offered by Supplier and accepted by the City.
- b) City Municipal Services Fee pursuant to Article 18.10.
- c) Consultant Services Fee pursuant to Article 18.10 (if not included in Supplier's accepted All-Requirements Power Supply prices).
- d) Any Printing and mailing costs associated with extra consumer outreach and consumer notice requirements directed by the City beyond those specified in Article 3.2.
- e) Any Support Costs pursuant to Article 3.3 not included in Supplier's accepted All-Requirements Power Supply prices.
- f) Any Program Promotions costs pursuant to Article 3.4.3 not included in Supplier's accepted All-Requirements Power Supply prices.

Pursuant to this Article 7.1 and after first consulting with Supplier, the City may make changes to Retail Prices, from time to time at its reasonable discretion. Any such changes to Retail Prices shall be effectuated by the Parties executing a new Price and Term Appendix to this ESA.

7.2 OBLIGATION TO SERVE

As between the Parties, Supplier has the sole obligation, subject to Article 5.5, to arrange for the delivery of All-Requirements Power Supply for all Participating Consumers at the Point of Delivery.

7.3 METERING

The Local Distributor will be responsible for any metering which may be required to bill Participating Consumers in accordance with the Local Distributor's terms and conditions for competitive suppliers, as may be amended from time to time.

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 competitive suppliers, Supplier will be responsible for any and all line losses incurred on the local network transmission systems and distribution systems, as determined by the Local Distributor.

7.4.2 Billing and Payment

Supplier shall cause the Local Distributor to prepare and mail bills to Participating Consumers monthly based on the meter readings performed by the Local Distributor for each Participating Consumer's meter(s). Supplier shall adopt the billing and payment terms offered by the Local Distributor unless Supplier and Local Distributor otherwise agree. If actual meter data is unavailable, Supplier 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 any Price and Term Appendix do not include current and future charges collected or assessed by the Local Distributor pursuant to its distribution service tariff, or local transmission costs as may be imposed by NEPOOL, ISO-NE, or individual electric utilities that have FERC transmission tariffs or other such distribution and transmission charges. All such costs will be billed to and collected from Participating Consumers 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.

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 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 this 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 OPTIONAL PRODUCTS

Supplier agrees that it will offer the optional Products 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 regulations applicable to competitive suppliers regarding the supply of retail power to Participating Consumers, and any amendments thereto, and any code of conduct or policies the Department may adopt in accordance with M.G.L. c. 164, § 1F(7). If a Participating Consumer so permits, to the extent such permission is required by law or the terms of any Department order with respect to this ESA, Supplier agrees to provide notice to the City and CPG of any consumer complaints submitted to, and recorded by, the Department or the Massachusetts Attorney General's Office by a Participating Consumer and received by Supplier that Supplier is unable to resolve with the Participating Consumer within five (5) Business Days following Supplier's receipt of the complaint. Supplier agrees to notify the City and CPG of such complaints after the expiration of said fifth Business Day, and the City or its agent may, at the City's election, participate and advocate on behalf of the Participating Consumer in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent not prohibited by Department regulations and other applicable law.

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 Department, 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 Department'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 Consultant Services Fee Payment/Usage Details Report (Appendix C) – Supplier shall provide the City or CPG with a monthly report of usage details, to back up each Consultant Services Fee payment made to CPG, which will contain:

- a. Aggregation Name
- b. Supplier Name
- c. Utility Name - Eversource East (Boston Edison)
- d. Utility Acct#
- e. Meter Number (Found on 810 EDI, REF01 = MG)
- f. Supplier Acct# (Supplier assigned # to reference the Utility Acct#)
- g. Service Name
- h. Rate Class Code (R1, R2, G1, G2, S1, etc.) at time of billing
- i. Meter Read Cycle (Found on 810 EDI, REF01 = BF)
- j. Load Zone (NEMA)
- k. Invoice Date (Found on 810 EDI, BIG01)
- l. Invoice# / Bill# (Found on 810 EDI, BIG02)
- m. Invoice Type (Normal On-Cycle Bill, Cancellation, Final Bill, Manual Bill, Off-Cycle, etc.). (Found on 810 EDI, REF01 = BE)
- n. Monthly Usage From/Start Date
- o. Monthly Usage To/End Date
- p. Usage (= # of kWh's used)
- q. Utility Rate Charged (= Energy Charge / kWh used)
- r. Energy Charge (Amount billed for Energy)
- s. Sales Tax (Amount billed for Sales Tax)
- t. Invoice Total (= Energy Charge + Sales Tax)
- u. Price Code (Price code used at billing) (Found on 810 EDI, REF01 = RB)
- v. Consultant Services Fee Payment Date (month/year)
- w. Consultant Services Fee Payment (Consultant Services Fee x kWh)
- x. ESA/Aggregation Rate (rate currently assigned to account (may be different than utility rate charged)

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

Weekly Rejection Report (Appendix E) – Supplier shall provide a weekly report showing rejected enrollments, drops, and change transactions with the information as detailed in Appendix D to this ESA. Report run date should be three months earlier than current date, to show past unresolved rejections.

Operational Reports – Supplier shall provide CPG with a copy of the Local Distributor’s sync files for the Program on a monthly basis.

EDI Transactions – Supplier shall provide CPG with electronic copies of all incoming and outgoing EDI transactions which relate to this ESA.

ISO-NE Settlement Data –

Supplier shall provide the City or CPG on a quarterly basis with ISO-NE settlement data 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 – On an annual basis, after June 15 of the given calendar year, Supplier shall provide the City or CPG with NEPOOL GIS settlement reports associated with the Program GIS Account, if applicable, or otherwise provide appropriate documentation, as each is defined in Article 5.4 for any RECs acquired and/or retired by the Supplier to meet any Voluntary REC product obligations pursuant to this ESA. The City acknowledges that the Supplier, in its own discretion, may choose to retire RECs only once per calendar year by the NEPOOL GIS 4th quarter retirement deadline on or around June 15 or more frequently throughout the year. RECs will be retired for all Participating Consumers collectively at the Program level.

11.1.2 Standard of Care

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

11.2 DISCLOSURE LABEL

Within fifteen (15) Business Days of the end of a quarter (quarter end dates are March 31, June 30, September 30 and December 31), to the extent required by the Department of all competitive suppliers to be disclosed to the City reported in a manner consistent with applicable Department regulations or orders, Supplier shall present to CPG a copy of the current “Disclosure Label” which label shall include all required information pertaining to Supplier’s product supplied to Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Supplier.

11.3 BOOKS AND RECORDS

Each Party shall keep its books and records directly relating to the services provided hereunder by Supplier to Participating Consumers in accordance with any applicable regulations or guidelines of the Department, 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, to the extent such reports are available to the City on www.sec.gov, the City may obtain the reports at that website.

11.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable written request, Supplier shall provide to the City a copy of each 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 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 if required by Article 16. Supplier shall be reimbursed its reasonable costs of providing such copies. Supplier may redact certain confidential aspects of such reports if it contains personal or private information of third parties.

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, without application of any rules relating to conflicts-of-laws. Any litigation arising hereunder shall be brought solely in the appropriate federal court in Massachusetts or appropriate state court sitting in 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. Notwithstanding anything in this Article 12.2 to the contrary, this Article 12.2 shall not prevent a Party from initiating litigation in order to toll an applicable statute of limitations, seeking injunctive relief to prevent irreparable harm, or seeking specific performance as provided by this ESA.

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 and the City's officers, employees, agents, representatives and independent contractors ("City Indemnified Parties") from and against any and all costs, claims, liabilities, damages, losses, expenses (including reasonable attorneys' fees) (collectively, "Losses"), arising from claims, causes of action, suits or judgments ("Claim"), incurred by, on behalf of or involving any one of the City Indemnified Parties to the extent arising from or in connection with third party claims alleging (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 (including CPG), 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 at Supplier's expense arising under this Article 13.1, and in that event, Supplier shall assume sole control and authority to defend, appeal and/or or settle the Claim through reputable independent counsel of its own choosing. The City Indemnified Party(ies) and Supplier shall reasonably cooperate in the defense of any Claim. Notwithstanding the foregoing, the City Indemnified Party(ies) may participate in the defense of any Claim through its own counsel at its own expense. Supplier shall give prompt written notice to such City Indemnified Party(ies) of any proposed settlement of an indemnified Claim. Supplier may not, without prior written consent of the City Indemnified Party(ies), which shall not unreasonably withheld, conditioned, or delayed, settle or compromise any Claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder. The foregoing is in addition to and not in limitation of any other remedies available to an City Indemnified Party.

13.2 NOTICE OF INDEMNIFICATION CLAIMS

If a City Indemnified Party seeks indemnification pursuant to this Article 13, 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. If requested by the City Indemnified Party pursuant to Article 13.1, upon written acknowledgment by Supplier that it will assume the defense and indemnification of such claim, Supplier may assert any defenses which are or would otherwise be available to the City Indemnified Party.

13.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 13 shall survive the termination of this ESA.

13.4 DUTY TO MITIGATE

All Parties agree that, in accordance with Massachusetts law, they have a duty to mitigate damages and covenant that they will use reasonable efforts to mitigate 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 the City's execution of this ESA, 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 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 Supplier enforceable against it in accordance with its terms, and 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) Supplier is a Forward Contract Merchant.

14.2 BY THE CITY

As a material inducement to Supplier's execution of 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 M.G.L. c. 164, § 134, to organize and implement the Program and has taken all action necessary to establish the Program;
- e) 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; and
- f) no Bankruptcy is pending or threatened against the City nor is the City contemplating Bankruptcy;

ARTICLE 15 INSURANCE AND OTHER FINANCIAL GUARANTEES

15.1 INSURANCE

Supplier will provide and maintain during the Term of this ESA all insurance required by the Commonwealth of Massachusetts with respect to performance of work under this ESA and as required in this section, and will assure that all agents, vendors, employees and subcontractors that perform work under this ESA carry appropriate coverage.

Insurance will be issued by insurers with a minimum AM Best Rating of A-VII. Insurance Certificates on ACORD Form 25 evidencing requirements below must be provided to the Official prior to the execution of any contract, with renewal certificates provided within 30 days of expiration. Complete copies of policy and endorsements may be requested.

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 Supplier or its insurer. Failure to maintain such insurance throughout the Term 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. \$1,000,000 per accident and employee, including disease.
3. **Umbrella Liability excess of General Liability, Auto Liability and Employer's Liability** for \$1,000,000 Each Occurrence/Aggregate.
4. **Professional Services** for \$2,000,000 per claim and \$2,000,000 in the aggregate with coverage continuing for one year after work period.
5. **Technology Errors & Omissions / 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 ESA. 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 must be named as Additional Insured on all policies except, Workers' Compensation and Employer's Liability.
2. Above insurance shall be primary and noncontributory over any such insurance available to the City of Boston, its officials, employees and volunteers.
3. Waiver of Subrogation will be included as respects all coverages listed above in favor of the City of Boston. The Workers' Compensation Policy must be specifically endorsed and noted as such in the required certificate.
4. 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. Such endorsements must be attached to the Certificate.

15.2 LETTERS OF CREDIT

Credit support 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, 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 Supplier (including, without limitation, (i) a material change in the creditworthiness of Supplier, or (ii) a material change in the City's estimate of potential future exposure to Supplier), the City may increase the Credit Support Amount, and increase Supplier's Parent Guarantee Amount or Supplier's Letter of Credit Requirement, or either or both as applicable.

ARTICLE 16 CONFIDENTIALITY

Notwithstanding anything to the contrary in this Article 16, nothing in this Article 16 shall be interpreted to prevent, delay or interfere with the City's acting 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 (collectively, the "Public Records Law"), if any, relative to any requests for public information concerning this ESA received from a third party.

To the extent consistent with the Public Records Law, each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's affiliates, employees, or contractors) 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. Notwithstanding the foregoing or anything to the contrary in this Article, 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; (v) is required to be publicly reported under any U.S. or state securities law; or (vi) is not exempt from disclosure under the Public Records Law.

Either Party may disclose the terms of this ESA to its affiliates, and to its 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, the disclosing Party shall request in writing 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 Law, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information to enable the other Party, at its cost and expense, 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 Supplier requests the City's assistance in protecting the confidentiality of its information and the City anticipates that it will incur costs in fulfilling Supplier's request, it shall give 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, Supplier shall reimburse the City for all actual costs, up to the estimated amount, reasonably incurred by the City in connection with such efforts.

For the avoidance of doubt, subject to the Public Records Law (but including a Party's right to have information remain confidential under the Public Records Law) 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 (as defined under the Public Records Law) 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 Department-approved changes to the Local Distributor's Purchase of Receivable ("POR") Plan originally approved by the Department pursuant to D.P.U. 10-53 shall be deemed a Change in Law. 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 Department 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, Supplier incurs additional, material costs in performance of its obligations under this ESA, 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 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 Supplier for such cost impact. The City must respond to Supplier's notice within ten (10) days of receipt. If the City and Supplier cannot agree on the amendment to this ESA or reimbursement contemplated by this section, the matter shall be subject to dispute resolution in accordance with Article 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 Supplier. Notwithstanding the foregoing, Supplier may assign this ESA without the consent of City to (i) an affiliated entity under common control or management with Supplier, (ii) Supplier's corporate parent, (iii) the surviving entity in a merger or consolidation in which it participates, or (iv) a purchaser of all or substantially all of its assets, with advance written notice to City, so long as (i) Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA in a form reasonably satisfactory to the City, (ii) the corporate parent Credit Rating of the assignee is at least equal to the existing corporate parent and meets the credit support obligations consistent with this ESA and fully guarantees the obligations of the assignee under the ESA, (iii) any pending Events of Default have been cured by Supplier, and (iv) all Representations and Warranties set forth in Section 14.1 are true at the time of the assignment. 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 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:

Direct Energy Services, LLC
Attn: Vice President, GM
910 Louisiana, Suite B200
Houston, TX 77002

With a Copy To:

Direct Energy Services, LLC
Attn: Legal Counsel - Consumer
910 Louisiana, Suite B200
Houston, TX 77002

If to City:

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

With a copy to:

Christopher Kramer
City of Boston Environmental Department
1 City Hall Square, Room 709
Boston, MA 02201
(617) 635-2518
christopher.kramer@boston.gov

With a copy to:

Adam Cederbaum
City of Boston Law Department
1 City Hall Square, Room 615
Boston, MA 02201

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 18.2 by giving notice thereof in the manner required herein.

18.3 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for Supplier changes, Supplier shall give prompt notice to the City in the manner set forth in Article 18.2. In the event that the name or telephone number of any such contact person for the City changes, prompt notice shall be given to Supplier in the manner set forth in Article 18.2.

18.4 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 but specifically excluding written agreements executed by the Parties prior to the Effective Date. This ESA may only be amended or modified by a written instrument signed by all Parties hereto.

18.5 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 such termination by either Party shall not constitute an Event of Default under this ESA and shall not give rise to any liability to either Party.

18.6 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.

18.7 NO JOINT VENTURE

Supplier will perform all obligations 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 Supplier hereunder are individual and neither collective nor joint in nature.

18.8 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.

18.9 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. A PDF of a signed copy of this ESA delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this ESA.

18.10 THIRD PARTIES

The Retail Price(s) for All-Requirements Power Supply as set out in the then effective Price and Term Appendix shall include (i) a Consultant Services Fee, payable by Supplier to CPG, and (ii) an Municipal Services Fee payable by Supplier to the City, each as set forth in the then effective Price and Term Appendix. Supplier shall make monthly Consultant Services Fee and Municipal Services Fee payments on behalf of Participating Consumers over the Term of this ESA by multiplying the applicable rate by the actual usage of Participating Consumers for which payment has been received by Supplier. Notwithstanding anything to the contrary in this ESA, the Consultant Services Fee payable hereunder is subject to the terms and conditions of any certain broker agreement between Supplier and CPG, if applicable. Supplier acknowledges the payment obligation set forth in this provision is a material obligation of Supplier during the term of this ESA. The Consultant Services Fee payment and Municipal Services Fee payment 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 this ESA, there shall be no other third-party beneficiaries to this ESA.

18.11 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.

18.12 CO-OPERATION

In the event this ESA requires approval from the Department, each Party agrees to use Commercially Reasonable efforts to cooperate in seeking to secure such approval, and in the case of the City, shall direct CPG or its successor to use Commercially Reasonable efforts to comply with this provision.

18.13 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, is incorporated into this ESA by reference, and that it shall be construed harmoniously with this ESA to the greatest practicable extent; notwithstanding the foregoing, but subject in all events to Governmental Rules, in the event of any conflict between this ESA and the Plan, this ESA shall govern. The City will provide advance notice of any proposed amendments to the Plan to Supplier and thereafter 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 18.4 of this ESA.

18.14 ADVERTISING LIMITATIONS

18.14.1 Advertising and Marketing

The Parties agree not to use the name of the other Party or make any reference to the other Party without the prior written consent of the other Party (which may be via email) in any advertising or marketing materials; provided, however, no such consent shall be required for other information to be distributed publicly as required by the Department 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. The Parties may elect to collaborate to prepare pre-approved marketing for the City or for Supplier to utilize during the Term of this ESA without approval for each usage.

18.14.2 Trademark and Trade Name

The City acknowledges that either Supplier or 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.

18.15 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 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 good faith efforts to agree as to the form, substance and timing of such release or statement.

18.16 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.

18.17 SURVIVAL OF OBLIGATION

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

18.18 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 ESA OR THE SUPPLIER'S PERFORMANCE HEREUNDER. THE SUPPLIER SHALL NOT BE LIABLE FOR ANY DAMAGE TO A PARTICIPATING CONSUMER'S EQUIPMENT OR FACILITIES.

18.19 INTERPRETATION

Where (i) the terms of a particular provision expressly identifies such provision as essential or material and (ii) the breach of the provision would be an Event of Default, the omission of similar terms in other provisions of this ESA shall not be interpreted to mean that such other provisions are not essential or material, or that a breach of such other provisions would not be a material breach or Event of Default.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this ESA and have authority to legally bind the entity for which they are respectively signing as of the Effective Date.

DIRECT ENERGY SERVICES, LLC

By: 

Name: Kevin Cole

Title: SVP, Direct Energy Services, LLC

Address: 804 Carnegie Center, Princeton, NJ 08540

Dated: 9/6/2025

CITY OF BOSTON, MASSACHUSETTS

By: 

Name: Brian Swett

Title: Chief Climate Officer

Address: City of Boston
1 City Hall Square, Room 709
Boston, MA 02201

Dated: 9/8/25

By: Signed Electronically Through BAIS Financial Approval

Name: Michelle Wu

Title: Mayor

Address: City of Boston
1 City Hall Square
Boston, MA 02201

Approved:

Signed Electronically Through BAIS Financial Approval

Adam Cederbaum, Corporation Counsel

Dated: _____

EXHIBIT A

Enrollment and Pricing Procedures

Enrollment procedures

	Residential	Commercial	Industrial	Large Industrial
Initial Eligible Consumers at Program Launch {if applicable}	<ul style="list-style-type: none"> • Will be mailed an opt-out notice with a respond by date • Will be automatically enrolled unless they exercise their right to opt-out • Enrollment will occur no sooner than 37 days after the mailing of the opt-out notice 			
New Eligible Consumers	<ul style="list-style-type: none"> • Will be initially placed on Basic Service • Will be mailed an opt-out notice with a respond by date • Will be automatically enrolled unless they exercise their right to opt-out • Enrollment will occur no sooner than 37 days after the mailing of the opt-out notice • May request enrollment at any time after becoming eligible. 			<ul style="list-style-type: none"> • May request enrollment at any time after becoming eligible
Consumers Who Opt-Out and Subsequently Wish to Re-Enroll	<ul style="list-style-type: none"> • May request re-enrollment at any time 			
Competitive Supply Consumers Who Wish to Enroll after their Contract Ends	<ul style="list-style-type: none"> • May request enrollment at any time 			

Pricing procedures

	Residential	Commercial	Industrial	Large Industrial
Initial Eligible Consumers at Program Launch	<ul style="list-style-type: none"> • Program rate for standard product 			
New Eligible Consumers	<ul style="list-style-type: none"> • Program rate for standard product 			<ul style="list-style-type: none"> • Then-current market price for product selected
Consumers Who Opt-Out and Subsequently Wish to Re-Enroll	<ul style="list-style-type: none"> • Program rate for product selected 			<ul style="list-style-type: none"> • Then-current market price for product selected
Competitive Supply Consumers Who Wish to Enroll after their Contract Ends	<ul style="list-style-type: none"> • Program rate for product selected 			<ul style="list-style-type: none"> • Then-current market price for product selected

APPENDIX A

FORM OF PRICE AND TERM APPENDIX NO. 1

City of Boston 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 **September 5, 2025** (“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 the Delivery Term and where each Product Retail Price will be applicable for all Rate Classes.

STANDARD PRODUCT

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

Rate Class	Retail Price (\$/kWh)
Residential	\$ 0.14231
Residential Low Income	\$ 0.14231
Small C&I	\$ 0.14231
Med-Large C&I	\$ 0.14231
Streetlight	\$ 0.14231

OPTIONAL BASIC PRODUCT

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

Rate Class	Retail Price (\$/kWh)
Residential	\$ 0.13661
Residential Low Income	\$ 0.13661
Small C&I	\$ 0.13661
Med-Large C&I	\$ 0.13661
Streetlight	\$ 0.13661

OPTIONAL GREEN 100 PRODUCT

[Eligible Consumers will only be enrolled in the Optional Green 100 Product if they elect it.]

Rate Class	Retail Price (\$/kWh)
Residential	\$ 0.16248
Residential Low Income	\$ 0.16248
Small C&I	\$ 0.16248

Med-Large C&I	\$ 0.16248
Streetlight	\$ 0.16248

2. Terms for Supply Service

- (a) **Delivery Term:** The Retail Price applies to service commencing with the Participating Consumers’ first meter read dates for the month of **December 2025** (the “Delivery Term Start Month”) (billed in arrears, therefore the January 2026 billing statements) and terminating with the Participating Consumers’ first meter read dates for the month of **December 2027** (the “Delivery Term End Month”) (final bill, therefore the December 2027 billing statements).
- (b) **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. Product Definition(s)

The table below defines each Product set out in Section 1 of this Price and Term Appendix, including the type and quantity of any Voluntary RECs included in each Product as specified in Article 5.4.1 of this ESA, as applicable.

Product	Voluntary RECs	Quantity	
		% of Program Load	Alternate Description
Standard Product	MA Class I RECs	15%	
Optional Basic Product	n/a	n/a	
Optional Green 100 Product	MA 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

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	Voluntary REC
Standard Product	Supplier	Supplier
Optional Basic Product	Supplier	n/a
Optional Green 100 Product	Supplier	Supplier

c) Supplier shall create and manage a Program GIS Account pursuant to Article 5.4.1 of this ESA.

5. **Consultant Services Fee:** Supplier shall include the Consultant Services Fee in the Retail Prices for each Product and Supplier shall pay to CPG the volumetric fee set out below multiplied by Participating Consumers' metered usage.

Consultant Services Fee: \$0.0008/kWh

6. **Municipal Services Fee:** Supplier shall include the Municipal Services Fee, in the Retail Prices for each Product and Supplier shall pay to the City the following volumetric fee multiplied by Participating Consumers' metered usage:

Municipal Services Fee: \$0.00034/kWh

7. **Consumer Awareness Costs:**

Initial Opt-Out Notice: Supplier shall conduct an opt-out mailing as directed by the City in a timeframe necessary for service to begin for Initial Eligible and New Eligible Consumers on the Delivery Term Start Date pursuant to Article 3.2 of the ESA.

Support Costs: The Support Cost Cap pursuant to Article 3.3 of the ESA is \$0.00/calendar year.

Program Promotions: The Program Promotions Cap pursuant to Article 3.4 of the ESA is \$100,000.00/calendar year.

8. **Credit Support:** Supplier's Credit Support Amount in the form of the Parent Guarantee and/or Letter of Credit is set 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 and a Letter of Credit, each as applicable, within 10 Business Days of executing this Price and Term Appendix.

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

9. Sweep Schedule

The table below sets out the Sweep Schedule pursuant to Article 3.5.3 of the ESA. The monthly schedule will repeat each calendar year of the Delivery Term.

#	Opt-Out Notice Mailed	Account Enrollment
1	Mar	May
2	Jun	Aug
3	Sep	Nov
4	Dec	Feb

*number of sweeps and dates above dependent on Delivery Term

10. Ratification of the Terms and Conditions of the ESA


- a) Except as expressly amended or waived by this Price and Term Appendix, the terms, conditions, covenants, agreements, warranties and representations contained in the ESA 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.

11. 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 ESA.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Price and Term Appendix on their behalf, which will be effective upon signature of the Parties. If the Parties sign on different dates, then it will be effective on the later date of signature.

CITY OF BOSTON, MASSACHUSETTS

By: 

Name (print): Brian Swett

Title: Chief Climate officer

Date: 9/8/25

Approved:

Signed Electronically Through BAIS Financial Approval

Adam Cederbaum, Corporation Counsel

Date: _____

DIRECT ENERGY SERVICES, LLC

By: 

Name (print): Kevin Cole

Title: Sr. Vice President, Direct Energy Services, LLC

Date: 9/6/2025

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

- 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)

BOSTON CCE

SUPPLIER OPERATIONAL RESPONSIBILITIES AND REQUIREMENTS

ESA Section

- C. 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 LABEL 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 CONSULTANT SERVICES FEE PAYMENT REPORT
TEMPLATE
[Consultant Payment/Usage Details]

Monthly Reporting Requirements for Commission Payment

FIELD

DESCRIPTION

City/Town Name

Aggregation Name

Supplier Name

Supplier Name

Utility

Utility Name - Eversource East

Account Number

Utility Acct#

Meter#

Meter Number

Info comes from 810 EDI (REF01 = MG), which has the number in the REF02 segment

Supplier Account Number

Supplier assigned # to reference the Utility Acct#

Service Name

Customer Name

Rate Code

Rate Class Code (R1, R2, G1, G2 S1, etc...) at time of billing

Cycle

Meter Read Cycle

Load Zone

Load Zone (NEMA)

Invoice #

Inv#/Bill#

Invoice Date

Invoice Date (Period)

Info comes from 810 EDI (REF01 = BE) which has one of these codes in the REF02 segment, shown below. We would like the words that describe the code, in this column. For example, if 03 was on the 810 EDI, we would like "Final Bill" populated on the report.

Invoice Type

REF01	Business Activity Code	BE
REF02	00	Normal On-Cycle Bill
	01	Cancellation
	02	Manual Bill
	03	Final Bill
	04	Off-Cycle Bill
	05	Balance Only Bill
	06	Estimated On-Cycle Bill
	07	Estimated Off-Cycle Bill
	08	Late Lead / Late Booked

Meter Read Start

Monthly Usage From/Start Date

Meter Read End

Monthly Usage To/End Date

Bill Usage

of kWh's used

Utility Rate Charged

= Energy Charge / Bill Usage

Energy Charge

Amt billed for Energy only

Sales Tax

Sales Tax Amt when charged

Invoice Total

= Energy Charge + Sales Tax

Info comes from 810 EDI (REF01 = RB), which has the code in the REF02 segment (this is the 3 character code that was sent to the utility on the their rate sheet)

Price Code

Commission Pay Date/Month

Pay Date (Commission Period) (Month/Year)

Commission Amount

Payment/Commission (Consulant Fee x kWh)

ESA Rate

Rate that is currently assigned to account (may be different than the utility rate charged)

APPENDIX D

MONTHLY ENROLLMENT REPORT TEMPLATE

WEEKLY ENROLLMENT AND REJECTION REPORT

Aggregation Name	Utility	Supplier Acct#	Utility Acct Number	POD# (Serv Ref#) / Meter#	Enrollment Status	Enroll Start Date	Last Dropped Date	Reject Date	Reject Type (Add, Drop, Change)	Reject Code	Utility Reject Reason/Description	OPT OUT/OPT IN NOTES	Customer Name
Boston	MAELEC	123456	1234512345		Active	10/22/2019						OPT IN Rcvd 10.1.19	JOHN SMITH
Boston	MAELEC	234567	1234512346		Dropped	09/22/2018	11/23/2019						JANE DOE
Boston	MAELEC	235464	1234512347		Rejected			4/13/2023		A76	Acct not Found		MARY WHITE
Boston	MAELEC	213252	1234512348		Submitted								COMCAST CABLE
Boston	MAELEC	215523	1234512349		Closed							OPT OUT Postcard	SAM SOUSA
Boston	MAELEC	544586	1234512350		Closed							Undeliverable Mail	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	Phone#	Utility Rate Code	Utility Rate Value	Utility Price Factor	Last Capacity Value	Aggregator Code (CD_CNTY - Ngrid only)
SMIT	WCMass	1 MAIN ST	MARLBORO	MA	01852	06	R1A	1 MAIN ST	MARLBORO	MA	01852			M01	0.09690	0000969	1.857	8824
JANE	WCMass	2 MAIN ST	MARLBORO	MA	01852	16	G1A	2 MAIN ST	MARLBORO	MA	01852			M01	0.09690	0000969	1.2	8824
WHIT	WCMass	3 MAIN ST	MARLBORO	MA	01852	15	R2A	3 MAIN ST	MARLBORO	MA	01852			M01	0.09690	0000969	0.78	8824
COMC	WCMass	4 MAIN ST	MARLBORO	MA	01852	16	G2A	4 MAIN ST	MARLBORO	MA	01852			M01	0.09690	0000969	41.2	8824
SOUS	WCMass	5 MAIN ST	MARLBORO	MA	01852	16	R1A	5 MAIN ST	MARLBORO	MA	01852			M01	0.09690	0000969	3.75	8824
COST	WCMass	6 MAIN ST	MARLBORO	MA	01852	16	R1A	6 MAIN ST	MARLBORO	MA	01852			M01	0.09690	0000969	5.12	8824

APPENDIX E

WEEKLY ENROLLMENT AND REJECTION REPORT TEMPLATE

Sample Rejection Report

Aggregation	Utility	Supplier	Supplier Acct#	Utility Acnt Number	POD# (Serv Ref#) / Meter#	Customer Name	Request Type	Date Last Submitted	Date Rejected	Reject Code	Reject Reason
Boston	BECO		123456	1234512345		JOHN SMITH	Addition	10/26/2020	10/27/2020	B30	CUSTOMER ENROLLED
Boston	BECO		234567	1234512346		JANE DOE	Addition	3/24/2023	3/24/2023	ANE	SERVICE REQUESTED IS NOT ELIGIBLE
Boston	BECO		235464	1234512347		MARY WHITE	Addition	10/26/2020	10/27/2020	CAB	ALL ENROLLMENTS REJECTED PER CUSTOMER REQUEST
Boston	BECO		213252	1234512348		COMCAST CABLE	Addition	10/26/2020	10/27/2020	A76	ACCOUNT NOT FOUND
Boston	BECO		215523	1234512349		SAM SOUSA	Dropped	10/26/2020	10/27/2020	A76	ACCOUNT NOT FOUND
Boston	BECO		544586	1234512350		FRANK COSTA	Addition	4/13/2023	4/14/2023	A77	ACCOUNT NUMBER DOES NOT MATCH NAME
Boston	BECO		215523	1234512349		SAM SOUSA	Change	10/26/2020	10/27/2020	A76	ACCOUNT NOT FOUND