

**AN ORDINANCE TO AUTHORIZE AND APPROVE AN ELECTRICITY  
PROCUREMENT CONTRACT STARTING IN FISCAL YEAR 2023**

#0168

Sponsor:

Council  
Member  
Oliver

**WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

**WHEREAS**, on March 10, 2022, the City, with the assistance of Enstrat Analytics, LLC, issued a request for proposals for electricity supply (the "Request for Proposals") to four pre-qualified suppliers (the "Suppliers") capable of managing the City's load and number of accounts; and

**WHEREAS**, each of the Suppliers submitted a response to the Request for Proposals; and

**WHEREAS**, the City must enter into one or more electricity supply contracts (the "Contracts") with one or more of the Suppliers commencing on or about July 1, 2022, copies of which Contracts, in substantial form, are attached hereto and incorporated by reference herein as Exhibit "A"; and

**WHEREAS**, the exact pricing from the Suppliers will not be available until immediately before the City enters into one or more of the Contracts; and

**WHEREAS**, the City will determine the exact length of the Contracts, not to exceed five (5) years, based upon such pricing; and

**WHEREAS**, it is the recommendation of the Department of Public Works that the City enter into one or more of the Contracts with one or more of the Suppliers for a term not to exceed five (5) years.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** The Contracts, copies of which, in substantial form, are attached hereto as Exhibit "A," for a period not to exceed five (5) years starting on or about July 1, 2022, are hereby approved, and the Mayor, or his designee, is hereby authorized to execute as many copies of one or more of the Contracts, as well to take all additional undertakings related thereto, as may be necessary.

**SECTION 2.** This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... May 5, 2022  
Second Reading..... May 5, 2022  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance authorizes the City to enter into one or more contracts for the purchase of electricity with one or more of four electricity providers starting in Fiscal Year 2023 for a term not to exceed five (5) years.

**FISCAL IMPACT STATEMENT:** The fiscal impact of this Ordinance cannot be precisely quantified because the pricing and length of the contract(s) will be determined immediately prior to execution of the contract(s). As a point of reference, the City has spent approximately Three Million Dollars (\$3,000,000.00) on the procurement of electricity in each of the last two fiscal years.

W0117259

# **EXHIBIT A**

## MASTER RETAIL ELECTRICITY SUPPLY AGREEMENT

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This Master Retail Electricity Supply Agreement ("**Master Agreement**" or "**Agreement**") is entered as of \_\_\_\_\_, 20\_\_ ("**Effective Date**") by and between <<NAME>> ("**Customer**" or "**Buyer**") and Constellation NewEnergy, Inc. ("**Constellation**" or "**Seller**"). Constellation and Customer are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**." This Master Agreement sets forth the general terms and conditions governing transactions for the purchase and sale of electricity and related products and services to one or more of Customer's accounts (each an "**Account**") as agreed to from time to time (each a "**Transaction**"). Each Transaction shall be evidenced by a pricing schedule, rider or other form of transaction confirmation (each a "**TC**" or "**Confirmation**"). This Master Agreement and each TC executed pursuant hereto shall constitute a single integrated agreement between the Parties (collectively referred to as the "**Agreement**"). Any conflict between the terms and conditions of this Master Agreement and any TC shall be resolved in favor of the TC. The Parties intend that they are legally bound by the terms of each TC from the moment each Party agrees to those terms, whether via (i) e-mail transmission solely by designated authorized persons listed below under the Parties' signature, or (ii) a duly executed, written TC. Nothing in this Master Agreement obligates either Party to enter into a TC at any time.

- 1. Constellation and Customer Obligations.** Constellation shall sell and supply, and Customer shall purchase and receive, Customer's full requirements for electricity for each Account identified in a TC. Constellation, in its sole discretion, may select such sources of energy as it deems appropriate to meet its obligations under the Agreement. Furthermore, Constellation shall enroll each Account with the applicable UDC as being supplied by Constellation and shall take such other actions with the applicable UDC and ISO necessary for Constellation to meet its obligations under the Agreement. "UDC" or "Utility" means the local utility distribution company owning and/or controlling and maintaining the distribution system required for delivery of electricity to an Account. "ISO" means the independent system operator or regional transmission organization responsible for the service territory governing an Account, or any successor or replacement entity.
- 2. Term of Master Agreement.** The term of this Master Agreement will commence on the Effective Date and, unless terminated earlier as provided in this Master Agreement, will continue until terminated by either Party upon 30 days prior written notice to the other; provided any TC will continue to be governed by this Master Agreement until the TC has been separately terminated or expired.

**Term of TC.** The term of each TC (which may also be identified as a Delivery Period) shall commence on or about the date set forth under "Start Date", and end on or about the date set forth under "End Date" in accordance with the terms of this Master Agreement. The actual Start Date is dependent on the UDC successfully enrolling the Account(s) and furnishing Constellation with all necessary information regarding the Account(s) meter read cycle and meter read date(s). The dates set forth in the TC reflect UDC information available at that time or as otherwise estimated by Constellation. The actual meter read dates may occur on or about the dates set forth in the TC. Constellation will use commercially reasonable efforts to begin service to each Account(s) on the actual meter read date on or about the Start Date set forth in a TC. If Constellation is unable to timely enroll an Account, the Start Date will commence on the next regularly scheduled UDC meter read cycle date following successful enrollment. The End Date will remain the same unless extended for a holdover term. Constellation shall not be liable for any failure to enroll or drop an Account by the Start and End Date due to circumstances beyond its control.

- 3. Information and Authorization.** Customer hereby authorizes Constellation to take such actions it deems necessary to enroll the Account(s) with the UDC as to be served by Constellation and to otherwise meet its obligations under the Agreement. Customer's signature on a TC or acceptance of terms via e-mail transmission constitutes its written authorization for Constellation to obtain from time to time from the UDC and ISO all current and historical energy billing, usage data and other related information. Customer shall take any actions, execute any documents and provide any information as Constellation reasonably requires.

- 4. Billing and Payment.**

**Billing.** After receiving Customer's usage for the Accounts, Customer will be billed for electricity usage and related products and services supplied under the Agreement in one of the following ways based on availability and eligibility of Customer's Account(s), which may change from time to time: (a) Dual Billing: Customer will receive two invoices, one from Constellation for the Electricity Charge and one from the UDC for the amounts payable by Customer for services provided by the UDC ("Delivery Charges"); (b) UDC/Utility Consolidated Billing: Customer will receive one invoice from the UDC that includes both the Electricity Charge and the Delivery Charges; or (c) Constellation Consolidated Billing: Customer will receive one invoice from Constellation that includes both the Electricity Charge and the Delivery Charges. "Electricity Charge" means the product of (i) the fixed or variable price for electricity, and other related fixed and/or pass through charges for related products and services supplied, as set forth in the TC for each Account; and (ii) the billing units associated with such charges during the applicable period.

**Taxes.** Customer shall pay all federal, state, municipal and local taxes, duties, fees, levies, premiums or other charges imposed by any governmental authority, directly or indirectly, on or with respect to the electricity and related products and services provided under the

Agreement, including any taxes enacted after the Effective Date (collectively, "Taxes"). **Constellation will apply all appropriate Taxes unless and until Customer provides a valid certification of tax exempt status.** Each Party shall indemnify, defend and hold harmless the other Party from and against any Taxes for which the indemnifying Party is responsible. All Taxes invoiced to Customer under the Agreement will be included on the invoice or in the applicable fixed price as allowed by Law.

**Estimates.** Constellation's ability to invoice Customer is dependent on the UDC's or ISO's ability to timely furnish Constellation with all necessary information, including Customer's metered usage. When there is a delay in receiving information from the UDC, ISO and/or other third parties, Constellation will, to the extent necessary, estimate charges and credits for a billing period and reconcile such estimates against actual charges and credits in a future invoice(s). Each invoice is also subject to adjustment for errors in arithmetic, computation, meter readings or other errors. Interest shall not accrue on such adjustments. For charges based on metered usage, if an Account is not equipped with meters that provide an hourly reading, Constellation will use either applicable load profiles provided by the UDC or, in their absence, an otherwise reasonable allocation method.

**Payment.** Constellation's invoices will be sent to Customer in accordance with Constellation's normal billing cycle, as adjusted from time to time consistent with the applicable UDC's meter read dates. The invoices will state any applicable Electricity Charge, Delivery Charges, Taxes and other amounts related to the purchase and delivery of electricity. Constellation's invoices are due and payable on the 20<sup>th</sup> day after the invoice date, or such other date as required by Law or as set forth in a TC ("Payment Date") without offset or reduction of any kind to the address on the invoice. If Customer disputes any invoice amount, Customer shall nonetheless pay the entire invoice amount when due. Upon resolution of a dispute, Constellation shall pay any agreed-to refund to Customer. Invoices not paid on or before the Payment Date will accrue interest daily on outstanding amounts from the Payment Date until paid in full, at the lesser of 1.5% per month or the highest rate permitted by Law. All invoices (including adjustments thereto) are conclusively presumed final and accurate unless such invoices are objected to by either Party in writing, including adequate explanation and/or documentation, within 24 months after the date such invoice was rendered, provided however, Constellation may rebill based on post-period audits or adjustments made by the ISO, UDC, or other governmental authority, commission or agency with jurisdiction in the state in which the Accounts are located.

5. **Holdover.** If following termination or expiration of a TC (whether in whole or in part), for any reason, some or all of the Accounts remain designated by the UDC as being supplied by Constellation, Constellation shall notify Customer within 30 days and may continue to serve such Account(s) on a month-to-month holdover basis. During such holdover term, Constellation will calculate Customer's invoice as follows: (Each Account's metered usage, as adjusted by the applicable line loss factor(s)) *times* (the applicable ISO-published Real Time or Day Ahead Locational Based Marginal Price ("LMP") identified in each TC + the \$/kWh holdover fee set forth in each TC) + (a pass through of all costs and charges incurred by Constellation for the retail supply of electricity to Customer) + Taxes. This Master Agreement will continue to govern the service of such Account(s) during such holdover term. Either Party may terminate the holdover term at any time within its discretion at which time Constellation will drop each Account as of the next possible meter read date to the then-applicable tariff service, whether default service or otherwise.
6. **Adequate Assurance.** If Constellation has reasonable grounds: (i) to believe that Customer's creditworthiness has become unsatisfactory; or (ii) for insecurity with respect to Customer's performance under the Agreement, Constellation may demand, in writing, adequate assurance of future performance from Customer in a form, in an amount, from an issuer, and for a term, all as reasonably satisfactory to Constellation ("Adequate Assurance"). To satisfy a demand, Customer shall provide Adequate Assurance to Constellation within 3 Business Days of the date of the written demand. "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.
7. **Event of Default.** An "Event of Default" means any one of the following: (a) Customer's failure to make, when due, any payment required under the Agreement if not paid within 5 Business Days (or such longer period required by applicable Law) following written notice to Customer that a payment is past due; (b) any representation or warranty made by a Party in the Agreement is false or misleading in any material respect when made or ceases to remain true in all material respects during the term of the Agreement, if not cured within 5 Business Days after written notice from the other Party; (c) Customer fails to provide Adequate Assurance as provided in the Agreement; (d) the failure by a Party to perform any material obligation set forth in the Agreement (other than the events that are otherwise specifically covered as a separate Event of Default hereunder) where such failure is not cured within 5 Business Days after receipt of written notice thereof; (e) either Party terminates the Agreement and/or any TC (or service to certain Account(s) under a TC) before the End Date of an effective TC for any reason other than Force Majeure or for a termination resulting from an Event of Default committed by the other Party; or (f) a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law for the protection of creditors, or has such petition filed against it; (iv) otherwise becomes bankrupt or insolvent (however evidenced); (v) is unable to pay its debts as they fall due; or (vi) is dissolved (other than pursuant to a consolidation, amalgamation or merger).
8. **Remedies Upon Event of Default.** If an Event of Default occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") may in addition to all remedies available to it at Law or in equity, in its discretion, at any time, (A) (i) suspend any deliveries hereunder and/or (ii) terminate the Agreement in whole or solely with respect to those Accounts adversely affected by such Event of Default, upon written notice to the Defaulting Party setting forth the effective date of termination (the "Early Termination Date") and/or (B) calculate a termination payment in good faith as described below. The Early Termination Date for any Accounts located in New York shall be no less than 15 calendar days from the date of written notice of termination and for any Accounts located in New Jersey shall be no less than 30 calendar

days from the date of written notice of termination. The Non-Defaulting Party will in good faith calculate a termination payment. The Defaulting Party shall pay such termination payment together with any other amounts due as of such date to the Non-Defaulting Party within 3 Business Days of receipt of notice of the amount of the termination payment. The Parties acknowledge and agree that any termination payment under the Agreement constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect. If Customer's property associated with an Account receiving electricity supply hereunder is closed, vacated, sold or otherwise disposed of by Customer, then either Party may terminate the TC with respect to such Account upon 30 days written notice to the other Party, in which event Customer shall make a termination payment to Constellation calculated in accordance with the next paragraph of this Section 8.

If Customer is the Defaulting Party, the termination payment shall be equal to the sum of: (i) the positive difference, if any, between the Energy Price or Retail Service Price set forth in the applicable TC and the Market Price, multiplied by the estimated undelivered volume of electricity which Customer would consume from the Early Termination Date through the original term of the TC, as reasonably calculated by Constellation; (ii) Constellation's Costs; and (iii) any unpaid amounts due from Customer to Constellation.

If Constellation is the Defaulting Party, the termination payment shall be equal to the sum of: (i) the positive difference, if any, between the Market Price and the Energy Price or Retail Service Price set forth in the applicable TC, multiplied by the estimated undelivered volume of electricity which Customer would consume from the Early Termination Date through the original term of the TC, as reasonably calculated by Customer; (ii) Customer's Costs; minus (iii) any unpaid amounts due from Customer to Constellation.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party as a result of the Event of Default. The "Market Price" shall be the price of electricity and services as of the Early Termination Date under terms substantially similar to those of the applicable terminated TC. The Non-Defaulting Party may determine the Market Price of a terminated transaction by reference to information either available to it internally or supplied by one or more third parties. The Non-Defaulting Party shall not be required to enter into a replacement transaction in order to determine or be entitled to a termination payment. Except for any unpaid amounts due prior to the Early Termination Date, no termination payment shall be owed by the Non-Defaulting Party to the Defaulting Party.

9. **Change in Law.** Upon 30 day notice, Constellation may pass through or allocate, as the case may be, to Customer any increase or decrease in Constellation's costs related to the electricity and related products and services sold to Customer that results from the implementation of new, or changes (including changes to formula rate calculations) to existing Laws, or other requirements or changes in administration or interpretation of Laws or other requirements. "Law" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, ISO business practices or protocol, UDC or ISO tariff, rule of any commission or agency with jurisdiction in the state in which the Accounts are located. Such additional amounts will be included in subsequent invoices to Customer.
10. **Representations and Warranties.** Each Party warrants and represents to the other (now and deemed repeated by each Party on each date on which a TC is executed and delivered) that: (i) it is duly organized, validly operating and in good standing under the Laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform under the Agreement; (iii) execution, delivery and performance of the Agreement are duly authorized and do not violate any governing documents or any of its contracts or any applicable Law; (iv) there is no material event(s) or agreement(s) which would impair that Party's right, authority or ability to execute the Agreement and otherwise perform under the Agreement; and (v) it has the knowledge and experience to evaluate the merits and risks associated with the Agreement.

Furthermore, Customer warrants, represents and covenants that: (i) the data given and representations made concerning its Account(s) are true and correct; (ii) it is entering into the Agreement to purchase its energy requirements only and not for speculative or resale purposes; and that the energy purchased under the Agreement will be consumed at the facilities to which the Account(s) relate; and (iii) it is the party of record of the Account(s), or if it is not the party of record, it has the authority to enter into and bind the party of record to the Agreement. If Customer is a Governmental Entity, Customer represents and warrants that it has complied with all applicable bidding and procurement laws in awarding this Agreement and any TC hereunder, and covenants: (i) it will not claim immunity on the grounds of sovereignty or similar grounds from enforcement of the Agreement; and (ii) it will obtain all necessary budgetary approvals, appropriations and funding for all of its obligations under the Agreement, the failure of which shall not be an excuse for Governmental Entity's performance or failure to perform hereunder and upon request will provide proof of such authority. "Governmental Entity" means a municipality, county, governmental board or department, commission, agency, bureau, administrative body, joint action agency, court or other similar political subdivision (including a public school district or special purpose district or authority), or public entity or instrumentality of the United States or one or more states.

11. **Force Majeure.** Notwithstanding any other provision of the Agreement, if a Party is unable to carry out any obligation under the Agreement due to a Force Majeure (other than a payment obligation, which shall not be excused for Force Majeure), the Agreement will remain in effect but such obligation will be suspended for the duration of the Force Majeure, provided: (i) the claiming Party notifies the other Party as soon as possible in writing of the particulars of the Force Majeure; (ii) suspension of performance is of no greater scope and duration than required by the Force Majeure; and (iii) the claiming Party uses commercially reasonable efforts to remedy its inability to perform. If the Force Majeure continues for a period of 30 days or more, or where it is impossible or impracticable for the claiming Party to carry out any obligation under the Agreement due to the Force Majeure either Party may terminate the Agreement with respect to the Accounts adversely affected by the Force Majeure upon 15 days prior written notice. "Force Majeure" means an event not within the reasonable control of the Party claiming Force Majeure and that by the exercise of due diligence, such Party is unable to prevent or overcome in a commercially reasonable manner. Force

Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; strike; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by the UDC or ISO; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under the control of either Party. Force Majeure shall not include loss or failure of either Party's markets or supplies.

12. **Limitations.** Notwithstanding any other provision of the Agreement to the contrary, neither Party nor their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns, shall be liable to the other Party for any consequential, exemplary, special, incidental, or punitive damages (including, without limitation, lost opportunities or lost profits) not contemplated by Section 8 above which are connected with or resulting from claims, losses, expenses (including reasonable attorneys' fees and court costs), damages, demands, judgments, causes of action or suits of any kind, arising out of, or in connection with, the performance or non-performance of a Party's obligations under the Agreement ("Claims"). The entire liability of each Party for any and all Claims will be limited to direct actual damages only as calculated pursuant to Section 8 above, subject in all cases to an affirmative obligation of each Party to mitigate its damages. Customer acknowledges and agrees that title passes from Constellation to Customer at the ISO/UDC interconnect, the UDC and ISO are exclusively responsible for the energy transmission and delivery system, that Constellation has no independent control over their systems and will have no liability for any of their acts or omissions.
13. **DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE OUT OF THE AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND CONSTELLATION SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.
14. **Waiver and Severability.** Failure to provide notice of, or object to, any default under the Agreement will not operate or be construed as a waiver of any future default, whether like or different in character. If any portion of the Agreement, or application thereof to any person or circumstance, is held legally invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law and equity, and there will be deemed substituted for the invalid provisions such provisions as will most nearly carry out the mutual intent of the Parties as expressed in the Agreement to the fullest extent permitted by applicable Law; provided, however, that this severability provision will not be applicable if any provision of Sections 7 and 8 of this Master Agreement (or any definition or provision in the Agreement to the extent it relates to, or is used in connection with, such sections) is held invalid or unenforceable.
15. **Assignment.** Customer may assign all its rights and obligations under the Agreement; *provided* (A) it gives Constellation 45 days prior written notice of its intent to do so; (B) the assignee satisfies in full Constellation's credit requirements; (C) the assignee assumes in writing all of Customer's obligations under the Agreement; and (D) Customer continues to be liable for performance, including payment for goods and services received, prior to the assignment date. Constellation may assign, sell, pledge, transfer, or encumber any of its rights and obligations under the Agreement or the accounts, revenues, or proceeds hereof to any: (A) bank, insurer, or other financial institution; (B) person or entity (i) succeeding to all or substantially all of Constellation's assets or business or the division or region of Constellation to which the Agreement relates or (ii) into which Constellation is merged or otherwise combined or reorganized; provided (with respect to this clause (B)) the succeeding entity agrees to be bound to the Agreement; or (C) affiliate.
16. **Confidentiality.** Each Party agrees to keep all terms of the Agreement and related communications (including pricing) confidential to the extent not otherwise publicly available and not to disclose them to any third parties without the prior written consent of the other Party, except as otherwise required by Law. Each Party may disclose such information to its affiliates and to its affiliates' employees, agents, advisors, and on a need to know basis to its independent contractors, provided each such recipient agrees to hold such information in confidence. Constellation may disclose information regarding Customer to third parties that are representing Customer in the purchase of energy or related services. Furthermore, Constellation may make such other disclosures to third parties, including aggregate consumption data, provided they cannot be reasonably expected to specifically identify Customer. If disclosure of confidential information is sought through a court, or a state or federal regulatory agency or other legal compulsion, the Party receiving such request will notify the other Party immediately to afford it the opportunity to oppose such disclosure via a protective order or other relief as may be available and will provide reasonable support.
17. **Choice of Law, Venue, Attorney Fees and Expenses.** The Agreement will be governed and interpreted in accordance with the laws of the state in which such Account is located (provided that the governing jurisdiction shall be deemed to be the State of New York if the matter at issue involves Accounts or matters in more than one state), without giving effect to conflict of law principles. Any controversy or claim arising from or relating to the Agreement will be settled in accordance with the express terms of the Agreement by a court located in the governing jurisdiction (and each Party hereto waives any right to object to venue in this regard). TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. If either Party pursues court action to enforce its rights under the Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs.
18. **Notices.** To be effective, all notices must be in writing delivered by hand, by certified mail return receipt requested, or by first class mail, or express carrier to the addresses provided in the TC. Notice by hand delivery shall be effective on the delivery date. All other notices shall be



effective on the delivery date or the date delivery is attempted. A Party may change its address by providing notice of such change in accordance herewith. An authorized person may also name other authorized persons via email.

19. **Miscellaneous.** The Agreement embodies the Parties' entire agreement and understanding, supersedes all prior agreements and understandings (whether written or oral) regarding the subject matter of the Agreement, and may not be contradicted by any prior or contemporaneous oral or written agreement. A facsimile or e-mailed copy of either Party's signature will be considered an original for all purposes under the Agreement, and each Party will provide its original signature upon request. Each Party authorizes the other Party to affix an ink or digital stamp of its signature to this Master Agreement and any TC, and agrees to be bound by a document executed in such a manner. No amendment or edits to the Agreement, including the TC(s) or any purchase orders, will be valid or given any effect unless signed by both Parties. The applicable provisions of the Agreement will continue in effect after termination or expiration hereof to the extent necessary, including but not limited to providing for final billing, billing adjustments and payments, limitations of liability, the forum and manner of dispute resolution. The section headings used in this Master Agreement are for reference purposes only and will in no way affect the meaning of the provisions of this Master Agreement. The Parties acknowledge that any document generated by the Parties with respect to the Agreement, including the Agreement, may be imaged and stored electronically and such imaged documents may be introduced as evidence in any proceeding as if such were original business records and neither Party shall contest their admissibility as evidence in any proceeding. The rights, powers, remedies and privileges provided in the Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by Law. Constellation shall have the right to set-off and net against any amounts owed to it under the Agreement, including without limitation any termination payment, any amounts owed by Constellation to Customer under the Agreement or any other agreement between the Parties, including without limitation any Adequate Assurance. Except for Section 12 above, no third party will have any rights under the Agreement whatsoever and Customer will be fully responsible for any compensation owing any third party representing Customer in connection with the Agreement and will indemnify, defend and hold Constellation harmless from all related Claims. Customer further authorizes Constellation to utilize Customer's name for publicity and marketing purposes.
20. **Affirmation; Acknowledgements.** Customer affirms that it has read the Agreement in its entirety and agrees to the terms and conditions contained herein. Any ambiguity or question of intent or interpretation under the Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of the Agreement. The Parties acknowledge and agree that: (i) Constellation is an independent contractor under the Agreement and except as otherwise explicitly provided in the Agreement, neither Party has the authority to execute documents that purport to bind the other, and nothing in the Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking; (ii) the Agreement and TCs entered into hereunder will constitute "forward contracts" under the U.S. Bankruptcy Code, as amended, the rights of the Parties under Section 8 above will constitute contractual rights to liquidate them, and the Parties are entities entitled to the rights and protections afforded to "forward contracts" by the U.S. Bankruptcy Code; (iii) Constellation is not Customer's consultant or advisor for any purpose including advice regarding the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended ("CEA"), including futures contracts and commodity options or any other activity which would cause Constellation or any of its affiliates to be considered a commodity trading advisor under the CEA; and (iv) Customer is making its own decisions based solely upon its own analysis and the advice of its own advisors, if any.

*\*Signature page to follow\**

IN WITNESS WHERE OF, the Parties have executed this Master Agreement through their duly authorized representatives as of the Effective Date.

**Constellation NewEnergy, Inc.**

**Customer:**

Signature:

Signature: \_\_\_\_\_

Printed Name:

Printed Name:

Title:

Title:

Date:

Date: \_\_\_\_\_

Address:

Phone:

Facsimile:

**Customer Authorized Persons:**

Printed Name:

Title:

email:

Phone:

**Constellation Authorized Persons:**

Commodities Management Group: 1-800-243-2113; [cmg@constellation.com](mailto:cmg@constellation.com)

Transaction Group: [#emailtransactions@constellation.com](mailto:#emailtransactions@constellation.com)

**Notices for Constellation entities:**

Address: 1001 Louisiana Street  
Constellation Suite 2300  
Houston, TX 77002

Phone: (844)-6-ENERGY

Facsimile:

DRAFT



## Cover Sheet to Master Energy Sales Agreement

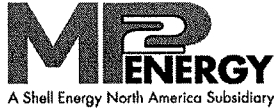
This contract is not binding until such time that it is executed by both Parties.

**In order for contract to be executed by MP2, customer must:**

- Complete Billing & Contact Information Page
- Sign the Signature Page of the Master Agreement and the Transaction Confirmation(s)
- Add your address for Legal Notices under your signature
- In the event that an agent is signing on behalf of Customer, have agent sign Agency Block found under the signature blocks

**Upon receipt of executed agreement, MP2 will:**

- Countersign both the MSA and the Transaction Confirmation(s)
- Schedule to enroll your Delivery Point(s)
- Hedge the power sold to you



## MASTER ENERGY SALES AGREEMENT

This Master Energy Sales Agreement (the “MSA” or “Master Agreement”) is entered into by and between MP2 ENERGY LLC as authorized agent for its applicable licensed subsidiary in each instance (the applicable licensed subsidiary, the “Seller”), and (“Customer”). Seller and Customer are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**1.1 Form and Construction of Agreement.** The terms of this MSA apply to all end-use sales of Energy by Seller to Customer (each sale a “Transaction”). Each Transaction shall be memorialized with a written confirm executed by the Seller and Customer (each a “Transaction Confirmation” or a “TC”). Each TC will include the commercial terms of the Transaction, including but not limited to the Delivery Period, Contract Price, contract quantities in MWh, costs and EDC Regulatory Charges, Delivery Points and any other special provisions agreed to between the Parties. Customer’s execution of a TC shall constitute an offer from Customer to Seller to purchase Energy on the terms set forth in the TC and the MSA. Upon Seller’s execution of the TC Seller shall sell, and Customer shall purchase and receive the Total Contract Quantity pursuant to the terms and conditions of this MSA and any applicable TC during the Delivery Period set forth on an applicable TC. Any conflict between the terms and conditions of this Agreement and a TC shall be resolved in favor of the applicable TC. This MSA, associated TC(s), and any amendments, addendums, annexes to either the MSA or a TC set forth the single integrated “Agreement” among the Parties with respect to the subject matter hereof and thereof, and supersede all prior or contemporaneous agreements and understandings (oral or otherwise) among the Parties with respect to the subject matter hereof and thereof. Attachment 1, City of Wilmington General Terms and Conditions, is here incorporated by reference to this MSA; however, the terms of this MSA shall take precedence in the event of a conflict amongst the terms. The Agreement may only be modified by a written agreement signed by both Parties.

**1.2 Term.** This MSA commences on the date when the first TC hereunder is executed by both Customer and Seller and continues until terminated in writing by both Parties or terminated under Sections 1.7 and 1.8 hereunder, it being the intent of the Parties that even if the MSA is terminated all Transactions between the Parties will be governed by the terms and conditions set forth in this MSA, as such MSA may be amended in writing from time to time and the termination of this MSA shall in no way release a Party from any obligations existing hereunder or under any effective TC prior to the end of a Delivery Period or Renewal Period. Upon expiration of a Delivery Period unless the Parties have executed a new TC with respect to the Delivery Points, Seller shall notify Customer and Customer shall continue to purchase and receive the Energy delivered to the Delivery Points at the Hold-Over Rate for successive one-month terms (each a “Renewal Period”) until either Party notifies the other Party in writing of its intention to terminate the TC at least twenty (20) days prior to the end of each Renewal Period. Upon timely notice of termination being received by the non-terminating Party, the termination date shall be the next effective drop date after the notice period as permitted by the EDC. The Contract Price during the Renewal Period shall be the Hold-Over Rate set forth on the applicable TC. The terms of this MSA will govern during the Renewal Period(s).

**1.3 Title, Risk of Loss and Taxes.** Title, liability and risk of loss associated with the Energy purchased and sold hereunder shall pass to Customer at the Delivery Point(s) specified on the applicable TC. Seller is responsible for Taxes arising prior to the Delivery Point and Customer is responsible for Taxes arising at and after the Delivery Point. If Customer claims exemption from Taxes, Customer shall provide Seller a certificate of exemption.

**1.4 Credit.** Seller’s entry into this MSA and each Transaction is contingent upon Customer, any guarantor or any successor maintaining its creditworthiness during the term of any Transaction and any Renewal Period. If Customer’s payment history, credit or financial condition becomes unsatisfactory as determined by Seller in a commercially reasonable manner Seller may request, and Customer shall furnish Seller, Performance Assurance in a form and amount acceptable to Seller within three (3) Business Days of the request. In no event will the amount of the Performance Assurance be more than three (3) times Customer’s estimated largest monthly invoice amount.

**1.5 Billing and Payment.** The method of billing applicable to a Transaction will be as set forth on a TC and will be either Utility Consolidated Billing (“UCB”), Dual Bill Option (“DBO” or “Dual Billing”) or Supplier Consolidated Billing (“SBO”). If Customer elects UCB Customer’s EDC will invoice Customer monthly for a) the Energy supplied by Seller under this Agreement, b) the EDC Regulatory Charges, and c) any applicable Taxes and payment will be made directly to the EDC by the



date specified on the UCB invoice. If Customer elects DBO Customer will instead receive both a monthly invoice from Seller for Energy and a separate monthly invoice from the EDC for EDC Regulatory Charges and Taxes, then following each meter read date, Seller will deliver to Customer an invoice setting forth the charges due for Energy. If available and Customer elects SBO Customer will receive one invoice from Seller for i) Energy supplied by Seller under this Agreement, ii) the EDC Regulatory Charges, and iii) any applicable Taxes and payment will be made directly to Seller by the date specified on the SBO invoice. In the event that Seller does not receive usage data from the EDC, Seller may reasonably estimate Customer's use and such estimate shall be adjusted when the actual consumption is received from the EDC. In the event of SBO or Dual billing, Seller's invoice will be sent via email or mail to Customer. In the case of SBO or DBO the day the invoice is sent is hereafter referred to as the "Sent Date." Payment shall be made by ACH, wire transfer, or check within 30 days of the Sent Date and unless directed otherwise by Seller. Overdue invoices will accrue interest at the statutory rate referenced for governmental entities in the state in which the Delivery Points are located. With respect to all forms of billing and invoices, Customer is responsible for all reasonable costs and fees incurred by Seller in collecting payment. During the term of this Agreement and for a period of two (2) years thereafter, if Customer disputes any amount on an invoice in good faith, Customer will contact Seller promptly in writing, stating the basis for the dispute and shall pay the undisputed amount by the due date; the amount in dispute may be withheld until the dispute is resolved. If the amount disputed is determined to be correct, it shall be paid (plus interest accrued under the above calculation method) within five (5) Business Days of such determination

**1.6 Force Majeure.** If a Party is unable because of Force Majeure to perform its obligations hereunder and that Party gives notice of the event to the other Party as soon as practicable after its occurrence, then the obligations of the Party affected by the event (other than payment for Energy received and performance of other transactions or other obligations incurred before the Force Majeure event) will be suspended for the duration of the Force Majeure event. "Force Majeure" means a material, unavoidable occurrence beyond a Party's control, but shall not include inability to pay, an increase or decrease in Taxes or the cost of Energy, the economic hardships of a Party, or the full or partial closure of Customer's facilities, unless such closure itself is due to Force Majeure.

**1.7 Events of Default.** "Default" means any one of the following: (a) the failure by either Party to make, when due, any payment required under the Agreement and such failure is not remedied within five (5) Business Days after written notice; (b) any assignment or general arrangement for the benefit of creditors made by either Party; or the Bankruptcy or Insolvency of either Party or its guarantor; (c) any unauthorized assignment of a Party's rights or obligations hereunder; (d) failure of a Party to provide Performance Assurance pursuant to the terms of the Agreement and such failure is not remedied within five (5) Business Days after written notice; (e) either Party consolidates or merges into or transfers all or substantially all of its assets to another entity and the resulting transferee or surviving entity fails to assume the obligations of such party under the Agreement; (f) Customer switches to another supplier or otherwise terminates a TC after the date Seller accepts a TC and before the Estimated Start Date as indicated on a TC or Customer switches to another supplier or otherwise terminates a TC after the Estimated Start Date and prior to the end of the Delivery Period; (g) Customer fails to receive all of part of the Total Contract Quantity pursuant to a Transaction and such failure is not excused by Seller's failure to perform or by Force Majeure; or (h) any breach of this Agreement by either Party and such breach is not cured within seven (7) Business Days after written notice. If an event of Default listed in subsection (b) above occurs, the Default will be deemed to have automatically occurred just prior to such event.

**1.8 Remedies Upon an Event of Default.** In the event of a Default, the non-defaulting Party shall have the right to: (a) accelerate any or all amounts owing between the Parties and liquidate and terminate any and all Transactions hereunder and/or this MSA; (b) withhold any payments due to the defaulting Party; (c) immediately suspend performance under this Agreement; and/or (d) calculate an Early Termination Fee ("ETF"). The ETF shall be due from the defaulting Party to the non-defaulting Party within (5) days of written notice of the ETF ("ETF Notice") being delivered by the non-defaulting Party to the defaulting Party. In the case where Customer is the defaulting Party the ETF is the sum of the positive dollar amount obtained by multiplying (i) Contract Price minus the Underlying Value by (ii) the remaining amount of the Total Contract Quantity that would have been delivered under this Agreement had it not been terminated early plus amounts owed for Energy delivered but not paid plus fees and expenses, including reasonable attorneys' fees incurred by Seller in connection with collecting all amounts due under this Agreement. In the case where Seller is the defaulting Party the ETF is the sum of the net sum of the positive dollar amount obtained by multiplying (i) Underlying Value minus the Contract Price by (ii) the remaining amount of the Total Contract Quantity that would have been delivered under this Agreement had it not been terminated early less amounts owed for Energy delivered, but not paid plus fees and expenses, including reasonable attorneys' fees incurred by Customer in



connection with collecting all amounts due under this Agreement. The provisions of this section shall be without prejudice and shall be in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). If Customer has elected to terminate this Agreement due to Seller's Default such termination shall be rescinded and of no force and effect if Shell Energy North America (US), L.P. (SENA) elects, during the cure period afforded Seller under this Agreement, to cure the Default or to take an assignment of this Agreement and assume Seller's duties and obligations under this Agreement. The Parties agree that the ETF constitutes a reasonable approximation of damages and is not a penalty or punitive in any respect. Seller may, but is not required to, physically liquidate a Transaction or enter into a replacement transaction to determine the ETF.

**1.9 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES IN TORT, CONTRACT OR OTHERWISE.**

**1.10 Representations and Warranties.** As a material inducement to entering into this MSA and each Transaction hereunder, each of the following is made upon execution of this Agreement and are deemed to be repeated each time a TC or additional agreement is entered into by the Parties:

A. Each Party, with respect to itself, represents and warrants to the other Party that: (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 to perform this Agreement; (b) the execution, delivery and performance of this Agreement 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 law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it; (c) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (d) it is not Bankrupt or Insolvent and there are no reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it.

B. Customer further represents and warrants to Seller as follows: (a) Customer's claims of exemption from Taxes, if any, are consistent with the laws and regulations of the applicable taxing authorities; (b) it fully understands its rights and obligations under this Agreement; (c) the Person executing this MSA and each TC is expressly authorized to enter into and bind Customer; (d) it shall provide Seller all information reasonably required to substantiate its usage requirements, which in substantial part form the basis for the calculation of charges for the Transactions entered into hereunder and execution of this MSA constitutes an authorization for release of Customer's information from the EDC or other applicable third parties including but not limited to the Utility Account Number(s), data about meter readings, rate class and electric usage, the Customer's name, address(es) and telephone number; (e) any usage information and utility class information provided is true and accurate as of the date furnished and as of the effective date of the Agreement; and (f) it is the intended end-use customer for all Energy purchased under this Agreement and it has entered into this Agreement for non-speculative purposes, and will not resell any of the Energy purchased under this Agreement.

C. Customer further affirms, represents and warrants that it is not a residential or small commercial customer (as those terms are defined in the jurisdiction(s) applicable to the Transaction) and the Delivery Points hereunder are not classified as such.

**1.11 Confidentiality.** Unless in response to a request under a public records act of the state in which the Delivery Points are located, neither Party shall disclose, unless authorized in writing by the other Party, the terms of this Agreement except that: a) a Party may disclose the terms of this Agreement to any of its employees, consultants and advisors who have a reasonable need to know the information in order to allow the Party to perform its obligations under this Agreement; and b) Seller may disclose the terms of this Agreement to its affiliates, including but not limited to Shell Energy North America (US), LP ("SENA").

**1.12 Material Regulatory Changes.** In the event that after the date of execution of this MSA, any new charges, fees, obligations, and/or requirements, are imposed by any Regulatory Body or if there is a change in law, administrative regulation, change in market design, or material change to the applicable capacity rate or transmission rate used to determine Customer's Capacity Charge or Transmission Charge by the EDC/ISO, where applicable (each a "Material Regulatory Change" or "MRC"), and as a result of the MRC, Seller incurs material incremental costs in order to maintain the same level, location and/or quantity of services contemplated under this Agreement, Seller shall pass through the cost of such MRC, without markup, to Customer and Customer shall pay such cost to Seller.



**1.13 On-site Generation and Material Adverse Change ("Material Adverse Change" or "MAC").** (a) Customer hereby represents and warrants that it has disclosed and accounted for all current or planned "behind-the-meter" distributed generation, storage, and net metering at its place of business and/or with respect to any Delivery Point location. Customer also covenants and agrees to promptly notify Seller if, after the Effective Date hereof, Customer adds, removes, increases or decreases "behind-the-meter" distributed generation, storage, and net metering at its place of business and/or with respect to any Delivery Point.

(b) Further, if there is change in Customer's business operations for any reason that produces a MAC in Customer's usage pattern and that usage pattern materially impacts Seller's ability to provide electric service to Customer, including, but not limited to, material increases in the costs to serve the Customer, then, in its sole discretion, acting reasonably, Seller may either (i) pass through such increased in costs to Customer without mark-up; provided such costs are documented and verifiable or (ii) provide 60 days' prior written notice to Customer of Seller's termination of this Agreement .

**1.14 Governing Law.** The Agreement between the Parties shall be governed by and construed in accordance with the laws of the State set forth on the applicable TC, without reference to principles of conflict of laws.

**1.15 Waiver of Jury Trial.** EACH PARTY HEREBY WAIVES ITS RESPECTIVE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS MSA AND ANY TRANSACTION HEREUNDER.

**1.16 Severability; Counterparts; Electronic Signature.** In the event any provision of this MSA or any TC is found to be invalid or unenforceable, such provision shall be invalid and unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision. This MSA and any TC may be executed in multiple counterparts and exchanged via email or facsimile and shall be construed as one as of the date it is executed by both Parties.

**1.17 Survival.** The applicable provisions of the Agreement shall continue in effect and survive the termination of the Agreement to the extent necessary to provide for final accounting, invoicing, billing, billing adjustments, resolution of any billing disputes, realization of any collateral or other performance assurance, set-off, final payments, or payments pertaining to liability obligations arising from acts or events that occurred in connection with the Agreement prior to termination.

**1.18 Assignment.** The Agreement shall be binding upon and shall inure to the benefit of, and may be performed by, the successors and assigns of the Parties, except that, no assignment by either Party shall operate to release the assignor from any of its obligations under the Agreement, unless: (a) the other Party consents in writing to such assignment and releases, the assignor from any of its obligations hereunder (such assignment not to be unreasonably withheld or delayed); or (b) such transfer is incident to a merger or consolidation with, or transfer of all, or substantially all, of the assets of the transferor to another Person that shall have the financial capability to assume, and who does assume all of the obligations of the assignor under the Agreement. Customer acknowledges that under some circumstances MP2 may be required to assign MP2's future interests, rights, and obligations in the Agreement to SENA, and Customer hereby consents to any such assignment.

**1.19 Forward Contract; Master Netting Agreement.** Each Party acknowledges and agrees (a) that this Agreement constitutes a forward contract and a master netting agreement as defined by the United States Bankruptcy Code (the "Code"); (b) each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; (c) Seller is not a "utility" as defined in Section 366 of the Code; (d) each Party waives and agrees not to assert the applicability of the provision of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor; and (e) this is an agreement for the sale and purchase of a commodity and nothing in this Agreement shall be construed as creating any other relationship between the Parties other than that of independent contractors.

**1.20 Anti-Corruption.** Each Party represents, warrants and covenants to the other that: (i) it will comply with the Anti-Corruption Laws (as defined herein) with respect to all transactions under this Agreement; (ii) it has not made and will not make, offer, authorize, or accept any payment, gift, or other benefit, directly or indirectly (whether via its affiliates, agents, contractors



or other third parties), to or from any government official or any other Person for the purpose of facilitating or carrying out any transaction hereunder which would violate the Anti-Corruption Laws; (iii) it will promptly notify the other Party if it becomes aware of any violation of the Anti-Corruption Laws in connection with any transaction hereunder, subject to the preservation of legal privilege; and (iv) except as the other Party may agree in writing, all payments payable to a Party pursuant to this Agreement shall be made only to the account of such Party, and not to the account of any other Person.

**1.21 Notices.** All notices will be made in writing and may be delivered by hand delivery, first class mail (postage prepaid), overnight courier service or facsimile to the address set forth below each Parties' signature and shall be effective upon receipt; provided however, that any notice of termination may only be sent by hand or by overnight courier service and, if Customer terminates the Agreement due to an alleged breach by Seller, a copy must be simultaneously delivered to SENA, 1000 Main, Level 12 Houston, Texas 77002 Attn: Contracts North America, Facsimile: 713-767-5414. Either Party may change its address for notice by advising the other Party in writing. In the event Customer fails to add its address below its signature on this MSA, Customer agrees that the billing address of the Customer shall be the legal notices address and hereby waives any objection to that address as the legal notices address and any claim that the address is not the proper legal notice address.

**1.22 Additional Definitions.** The following definitions shall apply hereunder whether stated in the singular or plural. Any capitalized terms not defined in this Master Agreement are defined in the TC or shall have the meaning set forth in the applicable EDC /utility rules, tariffs or other governmental regulations, or if such term is not defined therein then it shall have the well-known and generally accepted technical or trade meaning customarily attributed to it in the electricity industry.

**"Anti-Corruption Laws"** mean (a) the United States Foreign Corrupt Practices Act of 1977; (b) the United Kingdom Bribery Act 2010; and (c) all applicable laws that prohibit money laundering, or otherwise dealing in the proceeds of crime, or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to any government official or any other Person, or tax evasion.

**"Bankrupt" or "Bankruptcy"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under a bankrupt, Insolvent, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or Insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

**"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received. Any reference to "days" means calendar days.

**"Capacity Charge"** means the product of the applicable capacity rate and capacity quantity for the utility account as determined by the EDC/ISO or otherwise.

**"Contract Price"** means that "Contract Price" set forth on a TC.

**"Delivery Point"** means each of Customer's meters associated with the "Utility Account Number" as listed on a TC, or any replacement account number issued by the ISO/ EDC/utility from time to time.

**"Delivery Period"** means the period during which Seller has agreed to sell and Customer has agreed to buy Energy for the Delivery Point(s) as set forth on a TC.

**"EDC"** means the utility or entity that has control of the transmission and / or distribution system and associated metering that is connected to a Utility Account Number.

**"EDC Regulatory Charges"** means those costs listed on a TC as "Pass-through charges" which are levied by an EDC and taxing authorities and shall be invoiced to Customer on an actual cost basis without any markup.

**"Energy"** means electric energy and related products and services and includes transmission and capacity in certain markets.

**"Estimated Start Date"** shall have the meaning set forth on a TC.

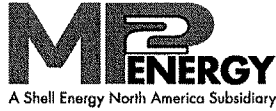
**"Hold-over Rate"** means the applicable rate set forth on a TC, that Customer agrees to pay for Energy delivered to the Delivery Points during the automatic Renewal Period.

**"Insolvent" or "Insolvency"** means with respect to any Party, when such Party shall be unable to pay liabilities as they mature, or such entity shall admit in writing its inability to pay its debts generally as they become due.

**"ISO"** means the applicable Independent System Operator as identified on each TC.

**"Performance Assurance"** means collateral in the form of cash, irrevocable standby letter(s) of credit, corporate guaranty, or other security all as reasonably acceptable to Seller.





“**Person**” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association, governmental authority or agency or other form or legal entity.

“**Regulatory Body**” means any ISO, EDC, state utility commission, FERC, CFTC or other similar body or federal, state, local, municipal or other governmental, regulatory or administrative agency, commission or any authority lawfully exercising or entitled to exercise jurisdiction over the Parties or any Transaction.

“**Taxes**” means any and all sales, use, gross receipts, ad valorem, franchise, excise, or any other taxes or similar charges imposed by any governmental authority on, or with respect to the Energy or other products sold hereunder but excluding income taxes imposed on the respective Parties.

“**Total Contract Quantity**” means Customer’s total forecasted usage for all contracted Delivery Points for the Delivery Period as set forth on a TC.

“**Transmission Charge**” means the product of the applicable transmission rate and transmission quantity for the utility account as determined by the EDC/ISO or otherwise.

“**Underlying Value**” means the price a third-party who is active in the Energy market would transact (sell or purchase as applicable) for Energy and related services in a commercially reasonable manner.



IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement.

**MP2 ENERGY LLC, as agent for its applicable licensed subsidiary**

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

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

**Name:  
Title:  
Date:**

**Name:  
Title: Authorized Signatory  
Date:**

**Address for Notices:**

**Address for Notices:  
MP2 Energy LLC  
21 Waterway Ave., Suite 450  
The Woodlands, Texas 77380  
Attn: General Counsel**

**In the event Customer is executing through an Agent, the Agent must sign below:**

\_\_\_\_\_ (“Agent”) represents and warrants that it has the authority to enter into this transaction on behalf of the Customer and that the Agent’s signature on this document and any associated TC serves to bind the Customer to the terms and conditions of this transaction. Agent understands that MP2 is relying on such representations and Agent hereby agrees to indemnify and hold harmless MP2 and its affiliates from and against all claims, losses, expenses, damages, causes of actions or suits of any kind arising out of or relating to a claim by Customer that the Agent lacked authority to enter into this Agreement on behalf of such Customer.

**NAME OF AGENT**

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



## Billing & Contact Information

Completion Required

Date: \_\_\_\_\_

Legal Entity Name: \_\_\_\_\_

### Contact Information:

Your Name \_\_\_\_\_

Phone Number \_\_\_\_\_

Email Address \_\_\_\_\_

### Billing Information

Billing Company Name \_\_\_\_\_

Billing Contact Name \_\_\_\_\_

Billing Contact Phone \_\_\_\_\_

Billing Address Line 1 \_\_\_\_\_

Billing Address Line 2 \_\_\_\_\_

Billing City, State \_\_\_\_\_

Billing Zip + 4 \_\_\_\_\_

Billing Contact Email 1 \_\_\_\_\_

Billing Contact Email 2 \_\_\_\_\_

Billing Contact Email 3 \_\_\_\_\_

**MP2 will send Customer invoices via email by default in order to reduce paper waste, U.S. Postal Service hydrocarbon waste, and to improve efficiency. If Customer prefers to receive invoices via the US Postal Service, please check the appropriate box below.**

- Paperless Invoice Preferred
- Paper Invoice Preferred
- Paper & Electronic Invoice Preferred

**If the below are applicable, please select, by initialing in the spaces provided. We will set up the account accordingly upon proper documentation received.**

\_\_\_\_\_ My accounts are Tax Exempt

If one or all of your ESI IDs are tax exempt, you must provide a current and completed Sales Tax Exemption form. MP2 Energy will only place exemptions on file once form is received.

\_\_\_\_\_ Summary Invoices

By default, you will receive individual invoices per ESI ID. Provide support documentation on how you wish your ESI IDs to be grouped if Summary is chosen.



This Commodity Master Agreement ("CMA") among **Direct Energy Business, LLC, Direct Energy Business Marketing, LLC d/b/a Direct Energy Business**, (collectively "Seller"), each a Delaware limited liability company, and City of Wilmington ("Buyer" or "Customer") (each a "Party" and collectively, the "Parties") is entered into and effective as of March 23, 2022.

**1. Transactions:** The terms of this CMA apply to all end-use sales of electric power and/or natural gas as applicable (each a "Commodity" and collectively, the "Commodities"), by the applicable Seller to Buyer (each sale a "Transaction") which will be memorialized in a transaction confirmation signed by both Parties (each a "Transaction Confirmation"). Each Transaction Confirmation shall set forth the Seller party providing service to Customer for such Transaction. This CMA, any amendments to this CMA and related Transaction Confirmation(s) (together, a single integrated, "Agreement") is the entire understanding between Parties with respect to the Commodities and supersedes all other communication and prior writings with respect thereto; no oral statements are effective.

**2. Performance:** Buyer is obligated to purchase and receive, and Seller is obligated to sell and provide, the Contract Quantity of Commodity specified in a Transaction Confirmation. Buyer will only use the Commodity at the listed Service Locations in the applicable Transaction Confirmation and will not resell the Commodity.

**3. Term:** The Delivery Period and any Renewal Term are set forth in the applicable Transaction Confirmation. This CMA shall remain in effect until terminated by either Party pursuant to Section 14 or as otherwise terminated by either Party for convenience upon at least 30 days' prior written notice; provided, however, that this CMA will remain in effect with respect to Transactions entered into prior to the effective date of the termination until both Parties have fulfilled all outstanding obligations.

**4. Purchase Price:** Buyer will pay the Purchase Price stated in each Transaction Confirmation, subject to Sections 5 and 10. If the Purchase Price incorporates an index and the index is not announced or published on any day for any reason or if the Seller reasonably determines that a material change in the formula for or the method of determining the Purchase Price has occurred, then the Parties will use a commercially reasonable replacement price calculated by the Seller.

**5. Changes to Purchase Price:** In the event there is a change to any tariff, law, order, rule, tax, regulation, transmission rate, or any LDC, EDC or ISO changes to supplier obligations to serve, which increase Seller's costs, the Purchase Price may be adjusted by Seller to include such costs. If any such change decreases the Seller's cost, Buyer will be notified within 30 days and Purchase Price adjusted to include the cost reduction.

**6. Billing and Payment:** Seller will invoice Buyer for the Actual Quantity of Commodity and for any other amounts for which Buyer is responsible under this Agreement. Except as otherwise set forth herein, payment is due within 30 days of the date of the invoice. If Seller cannot verify the Actual Quantity at the time an invoice is issued, Seller will estimate the Actual Quantity. Seller will adjust Buyer's account following (i) confirmation of the Actual Quantity, (ii) any Utility adjustment or (iii) any other corrections or adjustments, including adjustments to, or re-calculation of Taxes, and (iv) Seller will provide documentation to Buyer to validate any corrections. Buyer will pay interest on late payments for any amount due under this Agreement at 1.50% per month or, if lower, the maximum rate permitted by law ("Interest Rate"). Buyer is also responsible for all costs and fees, including reasonable attorney's fees, incurred in collecting any amounts owed to Seller and any fee charged to Seller for insufficient funds of Buyer. "Actual Quantity" means the actual quantity of Commodity that is either delivered or metered, as applicable, to Buyer's account. "Utility" means a state regulated entity engaged in the distribution of the applicable Commodity. During the term of this Agreement and for a period of two (2) years thereafter, the Parties shall maintain such books and records (collectively, "Records") as are necessary to substantiate that all invoices, adjustments and claims submitted by Seller to Buyer for payment were accurate, valid and proper. If Buyer determines that an error has been made on an invoice as a result of such audit, it may provide Seller with a written statement setting forth the amount of and the reason for the error. Seller may thereafter dispute such findings in writing within ten (10) days setting forth Seller's reasons and bases for disputing Buyer's assertions. Seller and Buyer shall use good faith efforts to promptly resolve the dispute.

**7. Taxes:** The Purchase Price does not include Taxes that are or may be the responsibility of the Buyer, unless such inclusion is required by law. Buyer will reimburse Seller for any Taxes that Seller is required to collect and pay on Buyer's behalf and will indemnify, defend and hold Seller harmless from any liability against all Taxes for which Buyer is responsible. Buyer must provide Seller with any applicable Tax exemption documentation and Buyer will be liable for any Taxes assessed against Seller because of Buyer's failure to timely provide or properly complete any such documentation. "Taxes" means all applicable federal, state and local taxes, including any associated penalties and interest and any new taxes imposed in the future during the term of this Agreement. Liabilities imposed in this Section will survive the termination or expiration of this Agreement.

**8. Disputes:** If either Party in good faith disputes amounts owed hereunder, the disputing Party will contact the non-disputing Party in writing and pay the undisputed amount by the payment due date. The Parties will have 15 Business Days to negotiate a resolution. If such dispute is not resolved, the disputing Party will pay the balance of the original invoice and either Party may exercise any remedy available to it at law or equity. "Business Day" means any day on which banks are open for commercial business in New York, New York; any reference to "day(s)" means calendar days.

**9. Title and Risk of Loss:** Title to, possession of and risk of loss to the Commodity will pass to Buyer at the Delivery Point specified in the applicable Transaction Confirmation.

**10. Material Deviation:** Seller may in its sole discretion pass through to Buyer any losses and/or costs incurred by Seller related to a deviation of +/-25% from Contract Quantity (or, as applicable, estimated Contract Quantities) stated in the applicable Transaction Confirmation (which is not caused by weather).

**11. Force Majeure:** Other than payment obligations, a Party claiming Force Majeure will be excused from its obligations under Section 2 only if it provides prompt notice of the Force Majeure, uses due diligence to remove its cause and resumes performance as promptly as reasonably possible. During a Force Majeure, Buyer will not be excused from its responsibility to pay for Balancing Charges nor from its responsibility to pay for Commodity received. "Force Majeure" means a material, unavoidable occurrence beyond a Party's control, and does not include inability to pay, an increase or decrease in Taxes or the cost of Commodity, the economic hardships of a Party, the full or partial closure of Buyer's facilities, unless such closure itself is due to Force Majeure.

**12. Financial Responsibility:** Seller's entry into this Agreement and each Transaction is conditioned on Buyer, its parent, any guarantor or any successor maintaining its creditworthiness during the Delivery Period and any Renewal Term. When Seller has reasonable grounds for insecurity regarding Buyer's ability or willingness to perform all of its outstanding obligations under any agreement between the Parties, Seller may require Buyer to provide adequate assurance, which may include, in the Seller's discretion, security in the form of cash deposits, prepayments, letters of credit or other guaranty of payment or performance ("Credit Assurance").

**13. Default:** "Default" means: (i) failure of either Party to make payment by the applicable due date and the payment is not made within 3 Business Days of a written demand; (ii) failure of Buyer to provide Credit Assurance within 2 Business Days of Seller's demand; (iii) any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true and such breach is not cured within 15 Business Days after written notice; (iv) a secured party has taken possession of all or any substantial portion of its assets or is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation or merger); (v) failure of a Party to fulfill any of its obligations in this Agreement (except as otherwise provided in subsections (i), (ii) (iii) and (iv) hereof) and such failure is not cured within 15 Business Days after written notice; provided that no cure period or demand for cure applies to an early termination of a Transaction Confirmation by Buyer or under Section 15(A)(iii).

**14. Remedies:** In the event of a Default, the non-defaulting Party may: (i) withhold any payments or suspend performance; (ii) accelerate any amounts owing between the Parties and terminate any Transactions and/or this Agreement between the Parties and/or their affiliates; (iii) calculate a settlement amount by calculating all amounts due to Seller for Actual Quantity and the Close-out Value for each Transaction being terminated; and/or (iv) net or aggregate all settlement amounts and all other amounts owing between the Parties and their affiliates under this Agreement and other energy-related agreements between them and their affiliates, whether or not due and whether or not subject to any contingencies, plus costs, into one single amount ("Net Settlement Amount"). Any Net Settlement Amount due from the defaulting Party to the non-defaulting Party will be paid within 3 Business Days of written notice from the non-defaulting Party. Interest on any unpaid portion of the Net Settlement Amount will accrue daily at the Interest Rate. "Close-out Value" is the sum of (a) the amount due to the non-defaulting Party regarding the Contract Quantities (or, as applicable, estimated Contract Quantities) remaining to be delivered as stated in the applicable Transaction Confirmation(s) during the Delivery Period or, if applicable, the current Renewal Term, calculated by determining the difference between the Purchase Price and the Market Price for such quantities; and (b) without duplication, any net losses or costs incurred by the non-defaulting Party for terminating the Transaction(s), including costs of obtaining, maintaining and/or liquidating commercially reasonable hedges, Balancing Charges and/or transaction costs. "Market Price" means the price for similar quantities of Commodity at the Delivery Point during the Delivery Period or Renewal Term. For purposes of determining Close-out Value, Market Price may be established by Seller through information available to Seller internally or through third parties, in a commercially reasonable manner with Buyer agreement. The Parties agree that Close-out Value constitutes a reasonable approximation of damages and is not a penalty or punitive in any respect. Physical liquidation of a Transaction or entering into a replacement transaction is not required to determine Close-out Value or Net Settlement Amount. The defaulting Party is responsible for all costs and fees incurred for collection of Net Settlement Amount, including, reasonable attorney's fees and expert witness fees.

**15. Representations, Warranties and Covenants:** Each of the following are deemed to be repeated each time a Transaction is entered into and during the Delivery Period and any Renewal Period: **A.** Each Party represents that: (i) 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 to perform to this Agreement; (ii) the execution of this Agreement is within its powers, has been duly authorized and does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it; and (iii) there are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, its parent or guarantor or to its knowledge, threatened against it, its parent or guarantor. **B.** Buyer represents, warrants and covenants that: (i) it is not a residential customer; (ii) execution of this Agreement initiates enrollment and service for the Delivery Period and any Renewal Term; (iii) if it is the person or entity executing this Agreement is doing so in its capacity as an agent, such Party represents and warrants that it has the authority to bind the principal to all the provisions contained herein and agrees to provide Seller true, correct and complete documentation of such agency relationship, and (iv) (a) it has and will provide, to Seller, all information reasonably required to substantiate its usage requirements; (b) acceptance of this Agreement constitutes an authorization for release of such usage information; (c) it will assist Seller in taking all actions necessary to effectuate Transactions, including providing an authorization form permitting Seller to obtain its usage information; and (d) the usage information provided is true and accurate as of the date furnished and as of the effective date of the Agreement. **C.** Each Party acknowledges that: (i) this Agreement is a forward contract and a master netting agreement as defined in the United States Bankruptcy Code ("Code"); (ii) this

Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodity; (iii) Seller is not a "utility" or an "energy generation facility" as defined in the Code; (iv) Commodity supply will be provided by Seller under this Agreement, but delivery will be provided by Buyer's Utility; (v) Seller does not own or operate transmission and distribution systems through which the Commodity is delivered to Buyer, and Seller is not liable for any damages or Losses associated with such transmission or distribution systems; and (vi) Buyer's Utility, and not Seller, is responsible for responding to leaks or emergencies should they occur. **D.** Seller warrants that (i) it has good title to Commodity delivered, (ii) it has the right to sell the Commodity, and (iii) the Commodity as delivered will be free from all royalties, liens, encumbrances, and claims. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

**16. Confidentiality:** Buyer will not disclose the terms of this Agreement, without prior written consent of the Seller, to any third party, other than Buyer's employees, affiliates, agents, auditors and counsel who are bound by substantially similar confidentiality obligations, trading exchanges, governmental authorities, courts, adjudicatory proceedings, pricing indices, and credit ratings agencies; provided that if Buyer receives a demand for disclosure pursuant to court order or other proceeding, it will first notify Seller, to the extent practicable, before making the disclosure.

**17. Indemnification; Limitation of Liability:** **A.** Buyer will be responsible for and shall indemnify Seller against all losses, costs and expenses, including court costs and reasonable attorney's fees, arising out of claims for personal injury, including death, or property damage from the Commodity or other charges (collectively, "Losses") which attach after title passes to Buyer. **B.** Seller will be responsible for and indemnify Buyer against any Losses which attach before title passes to Buyer. **C.** NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, LOST PROFITS OR SPECIFIC PERFORMANCE.

**Other:** **(A)** The Agreement, and any dispute arising hereunder, is governed by the law of the state in which the Service Locations are located, without regard to any conflict of rules doctrine. **(B)** Each Party waives its right to a jury trial regarding any litigation arising from this Agreement. **(C)** No delay or failure by a Party to exercise any right or remedy to which it may become entitled under this Agreement will constitute a waiver of that right or remedy **(D)** Any notice or waiver including without limitation any termination or disconnection notice, shall be provided in writing and, if sent to Seller, a copy delivered to: Direct Energy Business, Attn: Customer Services Manager, 1001 Liberty Avenue, Pittsburgh, PA 15222, Phone: (888) 925-9115; Fax: (866) 421-0257; Email: CustomerRelations@NRG.com. Notice sent by electronic means shall be deemed to have been received by the close of the Business Day on which it was transmitted, or such earlier time as is confirmed by the receiving Party. Notice delivered by overnight courier shall be deemed to have been received on the Business Day after it was sent, or such earlier time as is confirmed by the receiving Party. Notice delivered by first class mail (postage prepaid) shall be deemed to have been received at the end of the third Business Day after the date of mailing. **(E)** No amendment to this Agreement will be enforceable unless reduced to writing and executed by both Parties. **(F)** Seller may pledge, encumber or assign this Agreement or the accounts, revenues and proceeds thereof without Buyer's consent. Buyer may not assign this Agreement without Seller's consent not to be unreasonably withheld. **(G)** This Agreement may be executed in separate counterparts by the Parties, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. **(H)** Any capitalized terms not defined in this CMA are defined in the Transaction Confirmation or shall have the meaning set forth in the applicable Utility rules, tariffs or other governmental regulations, or if not defined therein then it shall have the generally accepted meaning customarily attributed to it in the natural gas or electricity generation industries, as applicable. **(I)** Any document generated by the Parties with respect to the Agreement, including the Agreement, may be imaged and stored electronically and may be introduced as evidence in any proceeding as if it were an original business record and shall not be contested by either party as admissible evidence. **(J)** Where multiple parties are Party to this Agreement with Seller and are represented by the same agent, this Agreement will constitute a separate agreement with each such Party, as if each such Party executed a separate Agreement, and that no such Party shall have any liability under this document for the obligations of any other Parties. **(K)** If a conflict arises between the terms of this CMA and a Transaction Confirmation, the Transaction Confirmation will control with respect to that particular Transaction. **(L)** If a broker or agent has been involved in any Transaction, such broker is an agent of Buyer only and not an agent of Seller.

IN WITNESS WHEREOF, this CMA is entered into and effective as of the date written above.

**Buyer:** City of Wilmington

**Seller:** Direct Energy Business, LLC  
Direct Energy Business Marketing, LLC

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

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

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

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

INTERNAL USE ONLY: BOLT ID: 5836808 SFDC ID: 00102565 - TPower Template FLAT - PJM w/New DR Version 32



**Direct Energy Business, LLC**  
 1001 Liberty Avenue Pittsburgh, PA 15222  
 1.888.925.9115  
[www.directenergy.com](http://www.directenergy.com)

**Date:** March 23, 2022  
**Product Code:**  
PJM DA FA XLCAPTRANSRMR+ DE  
**Contract ID:** 5836808

**CUSTOMER INFORMATION**

**Customer Name:** City of Wilmington  
**Contact Name:**  
**Address:** 800 N French St FL 5, WILMINGTON, DE, 19801-3590  
**Telephone:**  
**Fax:**  
**Email:**

**Billing Contact:**  
**3rd Party Bill Pay:**  
**Billing Address:**  
**Telephone:**  
**Fax:**  
**Email:**

**ELECTRICITY TRANSACTION CONFIRMATION - Delaware Index Energy Plus with Purchasing Options excluding Losses, Capacity, Transmission and RMR**

This Transaction Confirmation confirms the terms of the Electricity Transaction entered into between Direct Energy Business, LLC ("Seller"), and the customer above ("Buyer" or "Customer") pursuant to the terms of the Commodity Master Agreement between Customer and Seller and/or Seller's affiliate Direct Energy Business Marketing, LLC, d/b/a Direct Energy Business dated March 23, 2022, as may be amended (the "CMA"). If the referenced CMA is between Customer and Direct Energy Business Marketing, LLC, d/b/a Direct Energy Business, Customer and Seller agree that this Transaction Confirmation shall be governed by and incorporate the terms of such CMA. All attachments and exhibits hereto, including any request for a Forward Purchase or Purchase Confirmation are made a part of and incorporated into this Transaction Confirmation. The Purchase Price excludes Utility transmission and distribution charges and Taxes that are or may be the responsibility of Customer. Customer's execution and submission of this Transaction Confirmation, including Exhibit A hereto, to Seller shall constitute an offer from Customer to Seller to purchase the Commodity on the terms set forth in the CMA. This Transaction Confirmation shall become effective only upon (i) execution by Customer of this Transaction Confirmation, including Exhibit A, and CMA; and (ii) the earlier of (a) execution of the CMA and this Transaction Confirmation by Seller or (b) written confirmation by Seller of its acceptance of the Transaction Confirmation to Customer.

**DELIVERY PERIOD**

For each Service Location, the first meter read date will be on or after: July 01, 2022, and will continue for a term of 12 Months. Seller will request the Utility to enroll Customer on the first meter read date in the first month of the Delivery Period as defined by the Utility. The service start date hereunder will be the date that the Utility enrolls Customer for Seller's services. Seller shall not be liable for any lost savings or lost opportunity as a result of a delay in service commencement due to actions or inactions of the Utility.

Upon the expiration of the Delivery Period, this Transaction shall continue for successive one month terms (collectively the "Renewal Term") until either Party notifies the other Party in writing of its intention to terminate, at least 15 days prior to the end of the Delivery Period or 15 days prior to the end of each successive month Renewal Term. The termination date shall be the next effective drop date permitted by the Utility. All terms of the Agreement will remain in effect through the termination date as set by the applicable Utility. During the Renewal Term, the Purchase Price for each successive month Renewal Term will be the then market-based price for similar quantities of Commodity at the Delivery Point, including all Taxes, costs, charges or fees which are set forth herein, unless otherwise agreed to in writing by the Parties.

**DELIVERY POINT**

The Delivery Point shall be the point(s) where Commodity is delivered to the Utility. The Utility is specified on Exhibit A.

**BILL TYPE - DUAL**

**CONTRACT QUANTITY**

Customer and Seller agree that the Contract Quantity purchased and received means a positive volume up to or greater than the estimated quantities listed on the Exhibit A, provided, that for purposes of determining whether a material deviation has occurred, Contract Quantity shall include the applicable deviation in capacity and transmission tag values and for purposes of calculating Contract Quantities remaining to be delivered under the Remedies section of the CMA, Contract Quantity shall be determined by reference to the historical monthly usage for such Service Locations.

**PURCHASE PRICE**

The Purchase Price per kWh to be paid by Buyer for the services provided hereunder during the Delivery Period of this Agreement shall be that set forth on Exhibit A. The Purchase Price includes a Services Fee, as well as the components marked below as "Included". For those components marked "Pass through", they will be passed through to you at cost and shown as a line item on your bill.



<b>PJM</b>	<b>Value</b>
Energy	Pass Through
Ancillaries	Included
Auction Revenue Rights (ARR)	Included
Capacity	Pass Through
Losses	Utility Defined Loss Factor Pass Through
Marginal Loss Credits	Included
Reliability Must Run	Pass Through
RPS	Included
Transmission	Pass Through
Applicable Taxes	Pass Through

Any Actual Quantities of Electricity necessary to meet Customer's full usage requirements not covered by a Forward Purchase will be priced at the Day Ahead LMP. Customer understands and agrees that the combination of Forward Purchase(s) and Electricity priced and purchased at Day-Ahead LMP shall equal 100% of Customer's metered kWh usage.

## DEFINITIONS

**Ancillaries:** Wholesale commodity services and products required to facilitate delivery of Commodity to the Utility, including balancing congestion.

**Auction Revenue Rights (ARR):** Entitlements allocated annually to Fixed Transmission Service Customers that entitle the holder to receive an allocation of the revenues from the Annual FTR Auction.

**Capacity:** The Capacity obligations met through the provisions of the PJM Reliability Assurance Agreement (RAA).

**Day-Ahead Locational Marginal Price (LMP):** The hourly integrated market clearing marginal price for Electricity (per MWh(s)) at the location it is delivered or received as defined by the PJM ISO, as settled the day preceding the actual delivery of such Electricity.

**Exhibit A:** The list of Service Locations attached to this Transaction Confirmation, which list specifies the Service Locations covered under the scope of this Transaction Confirmation for PowerPortfolio, Day-Ahead, Real-Time and other index products. For fixed price products, it refers to the pricing attachment to this Transaction Confirmation that sets forth (together with this Transaction Confirmation) the Purchase Price applicable to, and the Service Locations covered by, this Transaction Confirmation.

**Exhibit B:** The Exhibit that Customer may complete, execute, and submit to Seller to confirm their offer to Seller to make a Forward Purchase.

**Load Following Forward Purchase:** Converting percentages of Electricity in 1% increments up to a maximum of 100% of Customer's metered kWh usage from the Day-Ahead LMP index to a fixed price.

**Load Following Forward Purchase Request:** The first document Customer submits to Seller to describe the details of the requested Load Following Forward Purchase.

**Marginal Loss Credit:** A credit provided by certain RTOs as a result of an over-collection of funds for transmission and distribution losses.

**PJM:** The Pennsylvania New Jersey Maryland Interconnection, L.L.C.

**PJM RTO:** The PJM Interconnection Regional Transmission Organization.

**Purchase Confirmation:** The written confirmation sent by Seller to confirm its acceptance of Customer's offer of a Forward Purchase.

**Regional Transmission Expansion Plan (RTEP):** PJM's Regional Transmission Expansion Plan identifies transmission system additions and improvements needed to keep electricity flowing to the millions of people throughout PJM's region.

**Reliability Must Run (RMR):** A unit that must run for operational or reliability reasons, regardless of economic considerations. Also called reliability agreement.

**Renewable Portfolio Standard (RPS):** A regulation that requires the increased production of energy from renewable energy sources.

**Services Fee:** The fee for the services provided by Seller to meet the Service Locations' load requirements, including any applicable broker fee, which is included in the Purchase Price to be paid by Buyer.

**Small Commercial Customer:** A retail electric customer taking service under Delmarva Power and Light Company tariff, currently on file with the commission, service classification "Small General Service-Non Demand Rate" or the Cooperative's tariff, currently on file with the Commission, Service Classification "General

Service". However, any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-residential customer for the purpose of contracting for electric supply service is exempt for the definition of Small Commercial Customer.

**Transmission:** The transportation of energy over high voltage wires from a generator to the Utility.

**Utility Defined Loss Factor:** Loss Factor as published in applicable utility tariff.

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## SPECIAL PROVISIONS

**1.. Load Following Forward Purchase:** Customer may purchase a percentage of its Electricity requirements, plus losses associated with transmission and delivery service, as a Load Following Forward Purchase. Such losses will be billed as a separate charge but at the same price as Electricity as fixed in accordance with the Load Following Forward Purchase and will be invoiced as either a separate item or included in the total aggregate charge for the Load Following Forward Purchase. Such purchases may not be less than 1% or more than 100% of Customer's total Actual Quantities for a minimum term of one (1) month. To initiate a Load Following Forward Purchase, Customer should fully complete and execute the required information in the attached "Request for Load Following Forward Purchase" and submit to Seller five business days prior to the desired start date. Seller will review and provide additional details and optionality in a form substantially similar to Exhibit B. If Customer finds the terms acceptable, it should execute the form and submit to Seller. All Load Following Forward Purchase orders are binding upon being filled and are made a part of this Transaction Confirmation. Seller will send a Purchase Confirmation to Buyer each time a Load Following Forward Purchase is filled. If more than one Load Following Forward Purchase is in effect for any month of the Delivery Period, Seller shall invoice Customer at the weighted average fixed price of said Load Following Forward Purchases. In all cases, the failure of Seller to send a Purchase Confirmation or the failure of Customer to acknowledge receipt of such shall not invalidate the Forward Purchase as agreed to by the Parties. If there are any inconsistencies between this Transaction Confirmation and any finalized Forward Purchase, such inconsistencies will be resolved in favor of the latter for that applicable purchase.

**2.. Email Transactions:** The Parties consent to the use of electronic agreements and to conduct Transactions and/or Load Following Forward Purchases via email and/or facsimile. Such electronic correspondence shall be deemed a "writing", by which the Parties intend to be bound, for purposes of satisfying any applicable state and federal legal requirements. The Parties agree that a typed name and title, including the use of an automated email signature block, in such writing(s) is the legal equivalent of such Party's representative's manual signature (an "E-signature"). The Parties agree that no certification of authority or other third-party verification shall be necessary to validate an E-signature and lack of such certification or third-party verification will not in any way affect the enforceability of a Party's E-signature.

**3.. PRICE INDEX MOVEMENT:** BY EXECUTION OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT THE DAY-AHEAD LMP INDEX IS A CONSTANTLY FLUCTUATING MARKET PRICE AND WILL VARY. CUSTOMER ASSUMES ALL RISKS OF PRICE MOVEMENTS AND AGREES TO PAY FOR THE SERVICES PROVIDED IN ACCORDANCE WITH THIS AGREEMENT.

**4.. Change in Utility Account Numbers:** The account number for a Service Location shall be the Utility Account Number set forth in the Service Locations attached in the Exhibit A, or any replacement account number issued by the Utility from time to time.

**5.. Third Party Charges:** Customer acknowledges that any costs assessed by the Utility or any third party as a result of Customer's switch to or from Seller, including but not limited to switching costs, are not included in the Purchase Price and shall be the responsibility of the Customer.

**6.. Billing and Payment:** The following is hereby added to the Billing and Payment section of the CMA:

"Seller and Buyer agree upon the following condition regarding its non-interval monthly meter accounts, if any: Seller will deaggregate the Buyer's usage, based on Utility and ISO settlement protocols, and Buyer agrees to accept the results of this deaggregation as its hourly billing determinants. Where Buyer has interval meters, Seller will use the interval meter hourly usage for billing only to the extent that the hourly usage is used by the applicable Utility and ISO for settlement purposes with Seller. In the event of an interval meter where the Utility and ISO do not use the hourly usage for settlements, Seller will deaggregate Buyer's usage, based on Utility and ISO settlement protocols, and Buyer agrees to accept the results of this deaggregation as its hourly billing determinants."

**7.. Right to Rescind:** If Buyer is a Small Commercial Customer, Buyer has ten (10) calendar days following the date that the Utility sends the confirmation letter to cancel (rescind) this Agreement by calling Seller at 1-888-925-9115.

**8.. Utility and Delaware Public Service Commission Contact Information:**

A) If Buyer has problems with its service or in the event of an emergency, such as power outage, it should contact the applicable Utility at:

1.) Delmarva Power and Light - Customer Care: 1-800-375-7117 Emergency Number: 1-800-898-8042 (New Castle County) or 1-800-898-8045 (Kent and Sussex Counties);

2.) Delaware Electric Co-Op - Customer Care: 1-800-282-8535 (New Castle County) or 302-349-9090 (Kent and Sussex Counties) Emergency Number: 1-800-282-8595 (New Castle County) or 302-349-9009 (Kent and Sussex Counties).

B) If Buyer has any additional questions, it may call the Delaware Public Service Commission at 302-736-7500 or by mail at: Public Service Commission, 861 Cannon Building, Suite 100, Dover DE 19904.

**9.. Risk Acknowledgements:** By selecting and executing this Transaction Confirmation, Buyer acknowledges that it is acting for its own account, and it has made its own independent decision to enter into this Agreement based solely upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of Seller or its affiliates (or its respective representatives) in any respect, and in particular, not as investment advice or as a recommendation to enter into any Agreement, it being understood that information and explanations related to the terms and conditions of any Agreement will not be considered investment advice or a recommendation to enter into the Agreement. Buyer understands and agrees that the energy market is a volatile market and that - except as to any agreed prices between the Parties described in this Agreement - no warranties (express or implied) and no guarantees regarding market movement or price trends are made by Seller or its affiliates in connection with this Agreement. No communication (written or oral) received from Seller or its affiliates (or their respective representatives) will be deemed to be an assurance or guarantee as to the expected results of any transaction elected by Buyer under this Agreement.

**10.. End User:** Buyer additionally represents, warrants and covenants that (i) it is NOT a residential or Small Commercial Customer (as defined in the Delaware Administrative Code); and (ii) it has a peak monthly usage of at least 3500kWh.

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**TAX EXEMPTION STATUS - If exempt, must attach certificate**

**In order to ensure accurate billing, tax status indication is required. Please check the appropriate status below:**

Non-Exempt

Exempt (e.g. Residential, Non-Profit Organization, Manufacturing, Small Business, Agricultural, Resale, etc.)

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<b>Buyer:</b>	City of Wilmington	<b>Seller:</b>	Direct Energy Business, LLC
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____
		Contract ID:	5836808
		Internal ID:	00102565

EXHIBIT A PRICING ATTACHMENT

This Exhibit A is to the Transaction Confirmation dated March 23, 2022 between  
**DIRECT ENERGY BUSINESS LLC**  
 and  
**City of Wilmington**  
 for a term of **12 Months**  
**Contract ID: 5836808**

**PJM\_DA\_FA\_XLCAPTRANSRMR+ DE**

Account Number	Service Location	Utility	Zone	Capacity / Transmission Tags	*Estimated Meter Read Start Date (MM/DD/YYYY)	Annual Historical Usage (kWh)	Purchase Price (cents/kWh)	**Estimated Capacity, Transmission and RMR (cents/kWh)
0500234042427000213349	HAY RD (JACOBS)	DPL_DE	DELM	3640.6 / 974.1	07/08/2022	15,715,835		
0550014586647000860250	1600 N Park Dr. (1600 N Park Dr. - SL - 0550014586647000860250 - DPL_DE - 1600 N Park Dr. - SL -)	DPL_DE	DELM	6.6 / 7.2	07/15/2022	2,951,681		
0550014873747000864891	Hoopes Reservoir (Hoopes Reservoir - SL - 0550014873747000864891 - DPL_DE - Hoopes Reservoir - SL -)	DPL_DE	DELM	6.9 / 12.9	07/15/2022	632,891		
0550095558187001099721	303 E 16TH ST (303 E 16TH ST - SL - 0550095558187001099721 - DPL_DE - 303 E 16TH ST - SL - 2687)	DPL_DE	DELM	304.7 / 362.5	07/25/2022	1,881,735		
0550097843767000695492	101 E 16th St. (101 E 16th St. - SL - 0550097843767000695492 - DPL_DE - 101 E 16th St. - SL - 26)	DPL_DE	DELM	6.8 / 7.1	07/25/2022	3,197,735		
0550105560867000464578	1401 Concord Pike (1401 Concord Pike - SL - 0550105560867000464578 - DPL_DE - 1401 Concord Pike - S)	DPL_DE	DELM	210.3 / 220.9	07/18/2022	2,106,846		
0550110265437000312875	1101 W 10th St. (1101 W 10th St. - SL - 0550110265437000312875 - DPL_DE - 1101 W 10th St. - SL -)	DPL_DE	DELM	140.0 / 101.5	07/12/2022	1,068,690		

**Total Annual Usage: 27,555,413**

**\*\*Estimated Price to Compare (cents / kWh):**

\*The Estimated Meter Read Start Date is merely an approximation based upon Seller's best estimation as to when the service will begin and may not reflect the actual start date. Seller shall not be liable for any lost savings or lost opportunity relating to this estimation.

\*\*Cost estimates ("Cost Estimates") are weighted average costs for the Delivery Period, may fluctuate based upon usage and are not guaranteed. Actual costs will be passed through with no markup. Estimated Price to Compare includes Purchase Price and such Cost Estimates.

**Monthly Contract Quantity**

KWh	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2022							756,349	1,582,945	1,437,520	2,055,961	2,496,943	3,387,310
2023	3,451,175	3,233,387	2,724,596	2,581,903	2,080,964	1,111,115	672,103					

\*Usage values in the above table represent the aggregated Usage for all Service Locations for a month. Material Usage Deviation includes for the purposes of this Exhibit A, any deviation caused by net metering or other Buyer initiated energy efficiency measures.

**This Exhibit is based on a Weighted Average Price. Any strikeouts of any of the accounts provided with a Weighted Average Price will render pricing for the accounts assigned with a Weighted Average Price null and void.**

Term of Months: **12 Months**

Meter Read Start Date: **July, 2022**

Please aggregate my account onto one invoice  
(If more than 50 accounts are to be aggregated, accounts will be separated by meter read date)

Accepted and Agreed to:

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

Date: \_\_\_\_\_



Exhibit "B"

**FORWARD PURCHASE ORDER FORM**

This Exhibit B is being provided pursuant to and in accordance with the Transaction Confirmation dated () and Commodity Master Agreement dated () between Customer ("Buyer") and Direct Energy ("Seller") (the "Agreement"), and is hereby incorporated into and made part of the Agreement. Buyer's execution and submission of this Exhibit B to Seller shall constitute an offer by Buyer to Seller to purchase Electricity in accordance with the terms set out below. This Exhibit B will become valid upon i) execution by the Buyer and ii) written confirmation of the Seller's acceptance of the terms herein to the Buyer.

1. Transaction details including the Term, Times of Delivery, Quantity and Energy Price are shown below:

Delivery Zone	Term Start	Term End	Time of Day	Energy/Commodity Price (\$/MWh)	Block Size (MW or %)	Quantity (MWH)
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2. Special Provision(s), if any:

In no event shall Buyer have any recourse against Seller for any purchase that is transacted under this Forward Purchase Order Form so long as the Commodity Price stated above is achieved.

Following written confirmation by Seller of its acceptance, Seller will make reasonable efforts to send Buyer an executed copy of this Exhibit B. However and in all cases, the failure of Seller to send an Exhibit B or the failure of Buyer to acknowledge receipt of an Exhibit B shall not invalidate the Forward Purchase agreed to by the Parties.

Unless specifically modified herein, all terms and conditions of the Agreement remain the same. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

This Exhibit B may be executed in one or more counterparts and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other Party by facsimile, mail, courier or electronic mail, all of which together shall constitute one and the same Agreement.

**DIRECT ENERGY BUSINESS, LLC**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PLEASE E-MAIL to the attention of: [EnergyAdvisors@directenergy.com](mailto:EnergyAdvisors@directenergy.com)

**City of Wilmington**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RETAIL ELECTRIC SUPPLIER AGREEMENT**

This Retail Electric Supplier Agreement is entered into by MidAmerican Energy Services, LLC (“MidAmerican”) and City of Wilmington, Delaware (“Customer”) and shall be effective as of the later date set forth under the parties’ signatures below (“Effective Date”). This Retail Electric Supplier Agreement, together with any written supplements thereto and all Schedules shall form a single integrated agreement (the “Agreement”) between MidAmerican and Customer. Customer acknowledges and agrees that it understands and accepts the terms, conditions and risks of this Agreement and it is entering into this Agreement for its own account based upon its own judgment and not in reliance upon any information, advice or counsel which may or may not have been provided by MidAmerican.

**CONDITIONS OF AGREEMENT.** This Agreement constitutes the entire understanding between MidAmerican and Customer regarding the subject matter hereof. No modification to this Agreement will be effective unless evidenced in writing signed by both parties. This Agreement supersedes all prior agreements between the parties regarding the subject matter of this Agreement. This Agreement is intended to govern transactions for the purchase and sale of electricity and related services to be entered into between the parties from time to time as evidenced by separate Schedules, as applicable (“Schedules”), setting forth certain commercial and other terms for the purchase and sale of electricity. The parties agree that the laws of the state in which Customer is incorporated govern this Agreement unless otherwise indicated on Schedule A. **To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.** The parties agree that this Agreement is a forward contract under all applicable federal and state bankruptcy laws and that they are forward contract merchants with respect thereto.

**CUSTOMER RESPONSIBILITIES.** Customer agrees to purchase and receive from MidAmerican 100% of its electric energy supply and related services for all the properties listed on the Schedules. Customer acknowledges that MidAmerican may recover all Losses and Costs as described in the section entitled Events of Default; Remedies, associated with the removal of any or all properties or accounts listed on such Schedules. Customer will take such actions as requested by MidAmerican to allow for timely enrollment of accounts listed on the Schedules and authorizes MidAmerican to perform duties on its behalf, including, but not limited to, submitting Customer enrollments to the electric distribution company or local Delivery Company (“Delivery Company”) and/or moving any of Customer’s properties on or off Delivery Company’s applicable tariffs, to permit Customer to receive the electric energy at its properties.

**MIDAMERICAN RESPONSIBILITIES.** Subject to the terms of this Agreement, MidAmerican agrees to sell and provide to Customer 100% of Customer’s electric energy supply and applicable related services for all the properties listed on the Schedules. MidAmerican will schedule and deliver electric energy, including amounts for associated transmission and distribution losses as defined by the delivery and/or

transmission tariffs (“Line Loss”), to the Delivery Company interconnecting point and the Delivery Company is responsible for delivery of electric energy to Customer’s properties.

**TERM.** The term of this Agreement shall commence on the Effective Date and shall remain in effect until terminated by either party upon thirty (30) days written notice; provided, however, that such termination shall not affect or excuse the performance of either party under any provision of this Agreement or any related Schedules. Early termination of any Schedules shall constitute an Event of Default and any applicable settlement amount shall be calculated according to the Events of Default; Remedies section of the Agreement.

**ENERGY DELIVERY.** Title to electric energy will pass from MidAmerican to Customer at the Customer’s meter(s) (the “Delivery Point(s)”). Each party will comply with all applicable federal and state laws and all applicable industry rules, and delivery and/or transmission tariffs, as amended from time to time.

**BILLING AND PAYMENT.** Customer will be billed monthly for all electric energy and related services as listed on the Schedules, plus any applicable taxes, delivery charges, or surcharges. Customer will pay each bill in full by the due date on the bill. Late payment charges may be assessed at a rate equal to the lesser of 1½% per month or the maximum rate allowable by law. In the event Customer disputes any portion of an invoice billing, Customer shall pay the undisputed portion of the bill no later than the due date and give notice in writing to MidAmerican of such dispute and the reasons therefore prior to the due date for payment. The parties shall negotiate in good faith to resolve such dispute. If it is determined the Customer owes any portion of the disputed amount, Customer shall immediately pay such amount upon resolution thereof. Termination of this Agreement will not relieve Customer of its liability for payment of any outstanding amounts due MidAmerican. During the term of this Agreement and for a period of two (2) years thereafter, the Parties shall maintain such books and records (collectively, “Records”) as are necessary to substantiate that all invoices, adjustments and claims submitted by Seller to Buyer for payment were accurate, valid and proper. If Buyer determines that an error has been made on an invoice as a result of such audit, it may provide Seller with a written statement setting forth the amount of and the reason for the error. Seller may thereafter dispute such findings in writing within ten (10) days setting forth Seller’s reasons and bases for disputing Buyer’s assertions. Seller and Buyer shall use good faith efforts to promptly resolve the dispute.

**EVENTS OF DEFAULT; REMEDIES.** For the purposes of this Agreement; the Events of Default are defined as follows:

- (i) fails to pay any amount, when due, with respect to this Agreement;
- (ii) is subject to a bankruptcy event;
- (iii) makes any representation or warranty that is false or misleading in any material respect;
- (iv) the removal of any or all properties or accounts listed on such Schedules;
- (v) fails to provide financial security to the other



## CONFIDENTIAL

party within two (2) business days of the other party's demand, when such demand is based on the other party's reasonable good faith belief that the ability of the defaulting party to perform its obligations under this Agreement is materially impaired; or (vi) fails to perform any other material obligation imposed upon it by this Agreement. In the Event of Default, the non-defaulting party has the right, without notice, to suspend performance and may terminate this Agreement at any time during the continuance of such event of default, upon which it will calculate in a commercially reasonable manner a settlement amount equal to its total Losses and Costs, if any, resulting from termination of this Agreement. Costs shall include, but not be limited to, reservation fees, reasonable attorneys' fees, and other similar third-party transaction expenses incurred by a party in terminating, liquidating or entering into new arrangements which replace any obligations assumed by such party due to the termination of this Agreement. Losses shall mean an amount equal to the nominal value of the economic loss to such party, exclusive of Costs, resulting from termination of this Agreement. The settlement amount will be due within ten (10) business days after the non-defaulting party has notified the defaulting party of the settlement amount. The non-defaulting party is obligated to respond and act in a commercially reasonable manner and mitigate its damages, liabilities, Losses and Costs.

**FAILURE OF DELIVERY.** MidAmerican will not be liable for any injury, loss, claim, expense, liability or damage resulting from failure by the Delivery Company or transmission provider to provide delivery services or properly perform and/or timely process any Customer enrollments or transmission requests.

**NO CONSEQUENTIAL DAMAGES.** In no event will either party be liable to the other party or to any third-party, for any special, incidental, indirect, consequential, punitive or exemplary damages or for any damages of a similar nature arising out of or in connection with this Agreement.

**INDEMNIFICATION.** Each party agrees to indemnify, defend and hold the other party harmless from and against all third-party claims for damages, liability and expenses relating to or arising out of damage to property or injury to persons (including death) resulting from the negligent acts, errors or omissions of a party or its agents. If the parties are held jointly and severally liable for any claim, damage, liability or expense of any third-party, a right of contribution will exist between the parties.

**FORCE MAJEURE.** If either party is unable, wholly or in part, by Force Majeure (as defined below) to carry out its obligations under this Agreement, and upon such party's giving written notice and full particulars of such Force Majeure to the other party as soon as practicable after the occurrence of the cause, the obligations of the party giving notice, so far as its obligations are affected by the Force Majeure, will be suspended during the continuance of the Force Majeure. Each party shall seek to remedy the Force Majeure with all reasonable dispatch. If a Force Majeure lasts for fifteen (15) continuous days, the party not subject to the Force Majeure has the option of terminating any affected Schedules at any time during the continuance of such Force Majeure. In the event of termination each party shall be entitled to calculate a settlement amount

equal to its total Losses and Costs, if any, resulting from termination of the affected Schedules and such amount shall be due from the other party within ten (10) business days after the other party has been notified of the settlement amount.

Force Majeure means any cause(s) not reasonably within the control, and without fault or negligence, of the party affected thereby and which by the exercise of reasonable due diligence by the affected party could not have been prevented, including without limitation, acts of God, civil disturbances, labor strike, inability of the Delivery Company to provide Delivery Services, inability of the transmission operator to provide transmission services or the curtailment of transmission service or the breakage, accident or failure of transmission and/or distribution facilities. Neither economic hardship nor economic conditions will constitute a Force Majeure under this Agreement. In the event of a Force Majeure, Customer shall continue to be obligated to make payments for all electric energy supply and related services delivered to and consumed at its properties.

**WARRANTIES.** MIDAMERICAN WARRANTS ONLY THAT IT HAS THE RIGHT TO SELL ENERGY SERVICES AND THAT SUCH ENERGY SERVICES ARE FREE FROM ALL LIENS OF ANY KIND. MIDAMERICAN DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**FINANCIAL RESPONSIBILITY.** Each party agrees to provide financial information reasonably requested by the other party to facilitate credit review. Each party certifies that all information provided to the other party is truthful and accurate and all information obtained from the other party will be kept confidential.

**ASSIGNMENT.** Neither party may assign this Agreement without the prior written authorization of the other party, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either party may assign this Agreement to the resulting entity of a corporate restructuring or other successor in interest and shall provide immediate notice of such assignment.

**CONFIDENTIALITY.** This Agreement and its terms are confidential and shall not be disclosed to any third party except as required by law.

**SEVERABILITY.** If any provision(s) of this Agreement is held to be invalid, illegal or unenforceable the remaining provisions will remain in full force and effect.

**NON-WAIVER.** Either party's failure at any time to require strict performance by the other party of any provision of this Agreement will not waive a party's right to demand strict compliance at any other time.

**RECORDED CONVERSATIONS.** Phone conversations between employees and/or authorized agents of the parties may be recorded on tape or other electronic media to verify customer service quality and pricing terms. Unless a party expressly objects to these recordings at the time of the recording, these recordings may be used as evidence in any proceeding or action relating to this Agreement.

**AGREEMENT NOTICES.** All written notices required by this Retail Electric Supplier Agreement must be delivered in person, by confirmed telefax, overnight mail or U.S. Mail as follows:

<b>For MidAmerican Energy Services, LLC</b>	
Company Name:	MidAmerican Energy Services, LLC
Attention to:	Electric Contract Administration
Address:	4124 NW Urbandale Drive
City, State, Zip:	Urbandale, IA 50322
Phone No:	(800) 432-8574
Fax No:	(563) 333-8563
E-mail address:	ContractAdmin- Electric@midamericanenergyservices.com

<b>For Customer</b>	
Company Name:	City of Wilmington, Delaware
Attention to:	
Title:	
Address:	800 N French St 6th Flr
City, State, Zip:	Wilmington, DE 19801-3590
Phone No:	(302) 576-3069
Fax No:	
E-mail address:	

**The parties, by the signatures of their authorized representatives, agree to be bound by all provisions of this Retail Electric Supplier Agreement.**

**ELECTRONIC SIGNATURES**

In accordance with federal law, Customer may execute this Agreement electronically, binding the parties to the same degree as a handwritten signature, by using the following process to create an electronic symbol signifying an intent to be legally bound. Customer shall submit electronic signature into signature block with designation of the person's name, date and time of signing. This Agreement shall not be binding on either party until both parties have executed versions of the Agreement, either electronically or via wet signature, that are identical (apart from the electronic execution) and delivered the same to the other party by electronic mail as an attachment.

**MidAmerican Energy Services, LLC**

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

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

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

Dated: \_\_\_\_\_

**City of Wilmington, Delaware**

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

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

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

Dated: \_\_\_\_\_