

ORD 26-020

AN ORDINANCE TO AUTHORIZE AND APPROVE AN ELECTRICITY PROCUREMENT CONTRACT STARTING IN FISCAL YEAR 2027

#0200

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, 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, three (3) 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, 2026, 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; and

WHEREAS, City Cuoncil deems it necessary and appropriate to authorize the City to 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, 2026, 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..... March 5, 2026
Second Reading..... March 5, 2026
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved as to form this 4th
day of March, 2026.


Senior Assistant City Solicitor

Approved this ____ day of _____, 2026.

Mayor

SYNOPSIS: This Ordinance authorizes the City to enter into one or more contracts for the purchase of electricity with one or more of three electricity providers starting in Fiscal Year 2027, which commences on July 1, 2026, for a term not to exceed five (5) years.

FISCAL IMPACT STATEMENT: The Office of Management and Budget has reviewed this Ordinance and the contracts attached as Exhibit A. The Ordinance authorizes the execution of an electricity sales agreement with one or more selected electricity suppliers for a term not to exceed five years, with final pricing determined at the time of execution based on prevailing market conditions. Electricity is an existing operating expense budgeted annually within the General Fund, Water/Sewer Fund, and certain smaller grant funds. This Ordinance does not establish a new program but authorizes continued procurement through competitively bid supply agreements. The contracts will establish a fixed or otherwise defined energy supply rate for the agreed delivery period, providing budget predictability and protection from short-term market volatility. Annual costs will depend on the contract price per megawatt-hour, actual electricity consumption, and applicable pass-through charges (e.g., transmission, capacity, and regulatory charges). Costs are expected to be funded through existing departmental operating budgets, subject to annual City Council appropriation. As a point of reference, the City expended approximately \$2.37 million for electricity in Fiscal Year 2025. The contracts also contain standard provisions related to performance assurance, early termination, and regulatory changes, which could result in contingent costs under certain circumstances. Such costs cannot be quantified in advance.

W0131219

EXHIBIT A



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 Seller, 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, Seller 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 (this “MSA” or “Master Agreement”) is entered into by and between MP2 Energy LLC, a Shell Energy North America Subsidiary and an authorized agent for its Applicable Licensed Subsidiary in each instance (the Applicable Licensed Subsidiary, the “Seller”), and the City of Wilmington, Delaware (“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 confirmation 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 this 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 Master Agreement and a TC shall be resolved in favor of the applicable TC. A conflict shall only exist if this MSA and the applicable TC contain directly contradictory terms; if this MSA contains a term and the applicable TC is silent on the issue, that shall not constitute a conflict. 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. The Agreement may only be modified by a written amendment 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, 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). Notwithstanding anything to the contrary in the foregoing, the term of this MSA, and of any TC executed hereunder, shall not exceed the period of five (5) years from the effective date of this MSA.

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 Performance Assurance. Seller’s entry into this MSA and each Transaction is contingent upon Customer, any guarantor, any successor or any assign 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 five (5) Business Days of the request.

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 the 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 (at Customer's sole discretion) within thirty (30) days of the Sent Date. Overdue invoices will accrue interest at the lesser of 0.5% per month or 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. 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 within ten (10) 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 ten (10) 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 ten (10) 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 the Agreement by either Party and such breach is not cured within ten (10) 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 the 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 ten (10) Business 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 the 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 the 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 the 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 the 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 the 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 the Agreement, to cure the Default or to take an assignment of the Agreement and assume Seller’s duties and obligations under the 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 Master 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 the Agreement; (b) the execution, delivery and performance of the 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) the 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 the 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 the Agreement and it has entered into the Agreement for non-speculative purposes, and will not resell any of the Energy purchased under the 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 of Delaware or as otherwise required by law, neither Party shall disclose, unless authorized in writing by the other Party, the terms of the Agreement except that: (a) a Party may disclose the terms of the 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 the Agreement; and b) Seller may disclose the terms of the Agreement to its affiliates, including but not limited to SENA.

1.12 Material Regulatory Changes. In the event that after the date of execution of this MSA, there is a change in law, including an administrative regulation, rule, design or structure, order, judicial decision, ISO protocol, or statute imposed, implemented, or otherwise administered by a Regulatory Body, or a change in an interpretation, operation, procurement practice, administration, material change in existing reliability charges or costs, or application of any of the foregoing (each a “Material Regulatory Change” or “MRC”), and as a result of the MRC, Seller incurs material incremental costs or credits in order to maintain the same level, location and/or quantity of services contemplated under the Agreement, Seller shall either pass through the cost of such MRC, without markup, to Customer and Customer shall pay such cost to Seller or Customer shall request the applicable credit. Either Party may request, and the other Party shall provide documentation detailing information related to such cost or credit.

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 and prior written notice is provided to Customer or (ii) provide sixty (60) days' prior written notice to Customer of Seller's termination of the Agreement.

1.14 Governing Law and Dispute Resolution. The Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. All disputes in connection with the Agreement shall be resolved by a court of competent jurisdiction located in New Castle County, Delaware. The Seller agrees to submit exclusively to the jurisdiction and venue of said court.

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 THE AGREEMENT 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 for 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 Seller may be required to assign Seller'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 the 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 the 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 the 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 the 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 Discrimination. In the performance of the Agreement, the Parties agree that they shall not discriminate, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

1.23 Records. The Seller shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by Customer to ensure proper accounting for all project funds. Such non-confidential, non-proprietary records may be made available for audit purposes to Customer or its authorized representatives upon request one (1) time per calendar year during the Delivery Period of the Agreement.

1.24 Business License. If required by City of Wilmington law and upon ninety (90) days' advance written notice by Customer to Seller, Seller shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

1.25 Taxes. The Seller shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City of Wilmington wage tax law.

1.26 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.

"Applicable Licensed Subsidiary" means MP2 Energy Texas LLC d/b/a Shell Energy Solutions and/or MP2 Energy NE LLC d/b/a Shell Energy Solutions.

"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.

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**Shell
ENERGY**

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

City of Wilmington

MP2 Energy LLC, a Shell Energy North America Subsidiary

By: _____

By: _____

Name:

Title:

Date:

Name:

Title: Authorized Signatory

Date:

Address for Notices:

City of Wilmington

Department of Public Works

800 North French Street, 6th Floor

Attn: Deputy Commissioner

Email: vcarroccia@wilmingtonde.gov

Address for Notices:

MP2 Energy LLC

909 Fannin Street, Suite 3500

Houston, Texas 77010

Attn: General Counsel

With a copy to:

City of Wilmington

Law Department

800 North French Street, 9th Floor

Attn: City Solicitor

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 Seller is relying on such representations and Agent hereby agrees to indemnify and hold harmless Seller 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: 3/4/2024

Legal Entity Name: City of Wilmington

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 _____

Seller 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 Delivery Point(s) are tax exempt, you must provide a current and completed Sales Tax Exemption form. Seller will only place exemptions on file once form is received.

_____ Summary Invoices

By default, you will receive individual invoices per Delivery Point. Provide support documentation on how you wish your Delivery Point(s) to be grouped if Summary is chosen.

Electricity Sales and Purchase Agreement

Seller: **CHAMPION ENERGY SERVICES, LLC**Buyer: **City of Wilmington**

Effective Date: ____/____/2026

This Agreement is made by and between Seller and Buyer (referred to collectively as the "Parties" and individually as a "Party"). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, with the intent to be legally bound, agree as follows:

ARTICLE 1: SCOPE OF THE AGREEMENT

1.1 Electricity Supply. Upon enrollment of Buyer's Facilities, Seller shall sell and deliver, or cause a third party (including Buyer's Local Utility) to deliver, and Buyer shall purchase and receive, 100% of Buyer's Electricity requirements for enrolled Buyer's Facilities at the Delivery Point(s) solely for use at Buyer's Facilities.

1.2 Transactions. From time to time, the Parties may, but are not obligated to, enter into one or more Transactions. Transactions will ordinarily be entered into by the execution of a Transaction Addendum. The Parties may also enter into Transactions orally or through the use of Electronic Communication, and in those cases Buyer shall execute, promptly upon Seller's request, a Transaction Addendum confirming the terms of such Transaction. The Parties agree that a Transaction Addendum may take the form of a facsimile or an Imaged Document. Notwithstanding the foregoing, the failure of either Party to execute a Transaction Addendum shall not invalidate an otherwise valid Transaction. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of a Transaction entered into in accordance with this Agreement based on any Law requiring agreements to be in writing or to be signed by the Parties.

ARTICLE 2: TERM OF AGREEMENT

2.1 Termination. Either Party may terminate this Agreement by providing thirty (30) days' written notice to the other Party; provided that this Agreement will remain in effect with respect to the Transaction(s) entered into prior to such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s) or such Transaction(s) have each been terminated under Articles 6 or 7 of this Agreement; provided that all obligations of the Parties which must survive such termination in order to give full force and effect to the intent of the Parties as expressed herein will survive such termination. Notwithstanding anything to the contrary in the foregoing, the term of this Agreement, and of any Transaction executed hereunder, shall not exceed the period of five (5) years from the Effective Date of this Agreement.

2.2 No-Transaction Deliveries. For periods during which Seller delivers and Buyer receives Electricity and there is no Transaction in effect with respect to such deliveries (including, without limitation, for any deliveries made subsequent to termination of this Agreement), Seller may terminate service by providing ten (10) days' written notice to Buyer of a date for such termination. If Seller provides such notice and Buyer does not switch to another

supplier, then, to the extent permitted by applicable Law, Seller may switch Buyer to a default supplier, or, if Seller is unable to switch Buyer to a default supplier, disconnect Buyer.

ARTICLE 3: PRICING

3.1 Contract Price. The price that Buyer pays for Electricity is set forth in each Transaction. If Seller delivers and Buyer receives Electricity and there is no Transaction in effect with respect to such deliveries (including, without limitation, for any deliveries made subsequent to termination of this Agreement), then the Contract Price for such deliveries will be the Base Price.

3.2 Taxes. As between the Parties, Seller is responsible for all Taxes incurred up to the Delivery Point and Buyer is responsible for all Taxes incurred at and after the Delivery Point whether imposed on Buyer or Seller. Seller may recoup such Taxes as a separate line item on Seller's invoice to the extent allowed by Law. Seller will recognize a sales tax exemption of Buyer only upon receipt of proper documentation from Buyer.

ARTICLE 4: SERVICE OBLIGATIONS

4.1 Enrollment. Buyer shall timely provide Seller with all information (including account information), documentation, and authorization required to appoint Seller as Buyer's Electricity service provider and to allow Seller to receive information from Buyer's Local Utility that is required for Seller to perform its obligations hereunder. Seller shall enroll Buyer's Facilities upon: (1) execution of a Transaction; (2) receipt of all information, documentation, and authorization required to appoint Seller as Buyer's retail supplier of electricity; and (3) a designated active switch date from Buyer's Local Utility.

4.2 Reimbursement. Seller shall reimburse Buyer for all costs and losses incurred by Buyer resulting from a delayed or unsuccessful enrollment or de-enrollment that is a direct result of a negligent act or omission by Seller. Buyer shall reimburse Seller for all costs and losses incurred by Seller resulting from a delayed or unsuccessful enrollment or de-enrollment that is a direct result of a negligent act or omission by Buyer.

4.3 Operational Requirements. Buyer shall use commercially reasonable efforts to operate Buyer's Facilities such that Electricity consumption is consistent with Buyer's Baseline. Unless otherwise specified in an Addendum, Buyer shall notify Seller as soon as practicable of: (i) any revised monthly consumption forecast; (ii) all scheduled or unscheduled outages or anticipated changes in usage; (iii) changes in Buyer's Baseline; and (iv) any removal of a

Buyer's Facility from service hereunder during the effective period of an Addendum or a Transaction. Buyer shall be responsible to Seller for any additional costs and losses incurred by Seller arising from (i), (ii), (iii) or (iv); provided that Seller shall use commercially reasonable efforts to mitigate any such costs and/or losses after receipt of such notice.

4.4 Metering. Buyer or Buyer's Local Utility is responsible for the cost of installing meters and related equipment (including any telemetry and associated telephonic connections) at Buyer's Facilities that are required by Buyer's Local Utility for Seller to perform its obligations under this Agreement. Such meters shall measure all Electricity at Buyer's Facilities. Buyer must provide Seller with reasonable access to Buyer's Facilities to install any additional metering equipment reasonably required by Seller. Seller shall be responsible for any costs associated with such additional metering equipment.

4.5 Delivery and Title. As between the Parties, Seller will be in exclusive control, hold title to, and be responsible for any damage or injury caused by Electricity before the Delivery Point(s). Seller shall have no further obligation or responsibility relating to the Electricity at and after the Delivery Point(s). Buyer acknowledges that Seller does not own or control any of the transmission or distribution facilities used to deliver Electricity to the Delivery Points, has no responsibility for system reliability, and that these functions are solely the responsibility of the RTO and/or Buyer's Local Utility, and accordingly that Seller shall have no liability on account of any acts or omissions of these parties or for any interruption or failure to deliver arising therefrom.

4.6 Demand Response and On-Site Generation. Buyer may (i) participate in curtailment or demand response programs and/or (ii) utilize on-site generation that is capable of serving Buyer's Facilities, provided that Buyer provides prior written notice to Seller. Buyer shall be responsible for any costs incurred by Seller associated with Buyer's participation in such programs and/or utilization of such on-site generation.

ARTICLE 5: BILLING, PAYMENT AND CREDIT

5.1 Seller Invoices. Seller's invoices will be sent to the address set forth in the applicable Transaction Addendum or otherwise specified by Buyer in writing. Seller shall calculate the amount(s) due based upon Buyer's actual usage and other necessary information or data. Seller may reasonably estimate usage and other charges at the time of invoicing; provided that Seller shall adjust subsequent invoices to reflect actual usage and charges after such information is received by Seller.

5.2 Payment Terms. Subject to Article 5.4, all Seller invoices are due and payable by Buyer to Seller, without Set-off, in accordance with Seller's invoice instructions and the payment terms specified in the relevant Transaction Addendum. For any amounts that are not paid by the due date, such invoices will accrue interest at the lesser of 0.5% per month or the statutory rate referenced for governmental entities in Delaware. Seller may assess and collect from Buyer all costs and reasonable attorneys' fees incurred by Seller in collecting any outstanding balance owed by Buyer.

5.3 Local Utility Invoices. Where applicable, and as further specified in a Transaction Addendum, Buyer will receive separate invoices from Seller and from Buyer's Local Utility for the services each entity provides ("Dual Billing"), or Buyer will receive a single invoice from Buyer's Local Utility that includes Seller's charges ("Consolidated Billing"). The due date of such utility-provided invoices will be determined by the Local Utility, and Buyer is responsible for timely payment of such invoices. Seller reserves the right to convert Buyer from Consolidated Billing to Dual Billing or from Dual Billing to Consolidated Billing, if such a conversion will facilitate more timely billing, collections, and/or payment.

5.4 Billing Disputes. If there is a good faith dispute regarding any invoice, Buyer shall pay to Seller the undisputed amount of such invoice. If any part of the dispute is resolved in Seller's favor, Buyer shall pay the resolved amount within ten (10) Business Days after such resolution. Buyer's right to dispute an invoice will be deemed waived if not made by the earliest to occur of any of the following: (i) one (1) year after the date of invoice; (ii) the closure of the settlement date of the applicable RTO or Buyer's Local Utility; or (iii) where recovery is prohibited by other applicable Law.

5.5 Credit. Upon any request from time to time by Seller, Buyer shall promptly provide to Seller such financial statements and other information as Seller may reasonably require to adequately assess Buyer's creditworthiness. If Seller has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of Buyer under this Agreement (including, without limitation on account of the occurrence of a material change in Buyer's creditworthiness or any Default), Seller may demand Adequate Assurances in an amount determined by Seller in a commercially reasonable manner, which Adequate Assurances shall be provided by Buyer within two (2) Business Days after such demand. In the event that Adequate Assurances are provided in the form of cash collateral, Buyer shall be deemed to have granted Seller a continuing first priority security interest in, lien on, and right of Set-off against such collateral.

ARTICLE 6: FORCE MAJEURE

Except for payment obligations, if either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, to the extent affected by the Force Majeure the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force Majeure. The Party claiming Force Majeure shall remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty (20) days, the Party not claiming Force Majeure may terminate the affected portions of any Transaction upon written notice to the other Party. Any termination due to Force Majeure will not be subject to an early termination payment.

ARTICLE 7: DEFAULT AND TERMINATION

7.1 Early Termination. If a Default with respect to a Party shall have occurred and be continuing, the non-defaulting Party shall have the right to suspend its delivery obligations and/or designate a date upon which all outstanding Transactions will liquidate and terminate and all amounts owing will accelerate and be netted into a single amount in accordance with Article 7.3 as of such date ("Early Termination Date").

7.2 Settlement Amount. The non-defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount for each terminated Transaction as of the Early Termination Date. For purposes of calculating such Settlement Amount for any terminated Transaction for which the Contract Quantity thereunder is not a fixed quantity, the Contract Quantity shall be the estimated baseline quantity set forth in the Transaction Addendum.

7.3 Termination Payment. The non-defaulting Party shall calculate a termination payment owed by the defaulting Party to the non-defaulting Party by: netting out (i) all Settlement Amounts that would be due to the defaulting Party, plus, at the option of the non-defaulting Party, any cash or other form of security then available to the non-defaulting Party, plus any or all other amounts due to the defaulting Party under this Agreement against (ii) all Settlement Amounts that would be due to the non-defaulting Party, plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted to a single amount, which shall not be less than zero (the "Termination Payment"). The Parties acknowledge and agree that the Termination Payment, if there is one, reflects actual damages to the non-defaulting Party. The Termination Payment shall be due and payable by the defaulting Party to the non-defaulting Party within ten (10) Business Days following the date of a Termination Payment invoice.

7.4 Post-Termination Deliveries. Notwithstanding any provision to the contrary, if Seller is required under Law to continue to make deliveries to Buyer under this Agreement or any Transaction after the Early Termination Date ("Post-Termination Deliveries"), the Parties agree that such obligation will not prohibit, limit or otherwise impair Seller's rights under this Article 7 (including, without limitation, the right to terminate and liquidate any Transaction and accelerate any amounts owing).

ARTICLE 8: LIMITATION OF LIABILITY

8.1 Limitations. FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR

HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS ARTICLE 8 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

ARTICLE 9: REPRESENTATIONS AND WARRANTIES

9.1 Mutual. Each Party represents and warrants to the other that: (i) it is validly existing and in good standing in the jurisdiction of its formation as well as the jurisdiction in which any applicable Delivery Point is located; (ii) the execution, delivery and performance of this Agreement and each Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any agreements to which it is a party or any Law applicable to it; (iii) it has not filed, does not plan to file, nor has it had filed against it, any bankruptcy proceeding; (iv) this Agreement and each Transaction constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); (v) it is not a party to or subject to any commitment that may restrict or interfere with the delivery or receipt of Electricity under this Agreement; and (vi) it is a "forward contract merchant" (within the meaning of such term as used in the U.S. Bankruptcy Code) and each Party is acting in its capacity as a forward contract merchant in entering into this Agreement.

9.2 Buyer. Buyer represents to Seller that: (i) Seller is not acting as Buyer's advisor, expert, fiduciary, representative or consultant and has not provided, and nothing herein will be claimed by Buyer as the provision of, advice regarding the value or advisability of trading in commodities; (ii) Buyer shall be solely responsible for retaining adequate advisors and counsel to advise it with respect to the obligations assumed hereunder regardless of any information provided by Seller; (iii) it has knowledge and experience in business matters sufficient to enable it to evaluate the risks associated with this Agreement and this Agreement is entered into by Buyer at Buyer's sole election and in the exercise of its independent judgment without duress; (iv) it is not relying on any representations of Seller other than those expressly set forth herein; (v) Buyer owns or controls Buyer's Facilities or has control over the purchase and receipt of Electricity therefor; (vi) all

of the information furnished by Buyer concerning Buyer's Facilities (including applicable load factors, Buyer's Local Utility rate classes and schedules, time of use, and service information), as well as financial information furnished by Buyer to Seller, is, to the best of Buyer's information and belief, true and accurate when furnished to Seller; (vii) it is a producer, processor, commercial user of or merchant handling the commodity subject hereto and has entered into this Agreement and any Transactions solely for non-speculative purposes related to such business; (viii) it shall not resell any Electricity received from Seller to a third party; (ix) each of Buyer's Facilities can be enrolled on the Start Date specified for each Transaction; (x) it understands that if a broker or consultant was involved in a Transaction, the fee or commission associated with such broker or consultant may be included in the Contract Price; and (xi) it has disclosed to Seller the existence of any on-site generation (other than emergency back-up generation). The representations and warranties made in this Article are deemed to be repeated upon the execution of any Transaction.

9.3 Warranties. NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING THE SALE, PURCHASE OR DELIVERY OF ELECTRICITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. SELLER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE. THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE SHALL BE AVAILABLE AGAINST ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, OR AFFILIATE OF A PARTY UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT.

ARTICLE 10: BANKRUPTCY CODE MATTERS

The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each Party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor. The Parties further agree that all Electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the U.S. Bankruptcy Code.

ARTICLE 11: DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

"Adequate Assurances" means collateral in the form of cash, letters of credit, or other security acceptable to Seller.

"Affiliates" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or

more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" means this Electricity Sales and Purchase Agreement, including all appendices, Addenda, Voice Records, Electronic Communications, and schedules, which are incorporated herein by reference as part of this Agreement, and all Transactions and any credit support or similar agreement between the Parties in respect thereto.

"Base Price" means an amount per MWh in \$US (unless otherwise provided for) equal to the sum of (1) the applicable market index price for the Delivery Point(s), and (2) a retail adder to be fixed by Seller based upon Seller's then applicable month-to-month rate; provided that taxes, capacity, and other similar charges incurred by Seller may be passed through to Buyer if such charges are not already included in Seller's month-to-month rate.

"Business Day" means any day except Saturday, Sunday, or Federal Bank Holidays.

"Buyer's Baseline" means the stipulated MWh usage set forth in each Transaction.

"Buyer's Facilities" means the enrolled account(s) identified in an applicable Transaction Addendum.

"Buyer's Local Utility" means the electric distribution utility or utilities responsible for delivering Electricity to Buyer's Facilities.

"Contract Price" means the price per MWh in \$US (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Electricity as specified in a Transaction.

"Contract Quantity" means the quantity of Electricity specified in a Transaction.

"Costs" means, with respect to the non-defaulting Party only, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with enforcing its rights under this Agreement in the event of termination.

"Default" means, with respect to a Party (the defaulting Party), the occurrence of any of the following; (1) the failure to make, when due, any payment required pursuant to this Agreement or otherwise, if such failure is not remedied within five Business Days after written notice; (2) any representation or warranty is false or misleading when made or repeated; (3) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Default) if such failure is not remedied within five Business Days after written notice; (4) the failure by Buyer to provide Adequate Assurances in accordance with Article 5.5; (5) such Party (or such Party's credit support provider) files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar Laws for the protection of

creditors, or has such a petition filed against it; (6) such Party makes an assignment or any general arrangement for the benefit of creditors; (7) such Party otherwise becomes bankrupt or insolvent (however evidenced); (8) such Party becomes unable to pay its debts as they fall due; (9) termination of a Transaction prior to its End Date unless otherwise expressly agreed to in the Agreement; or (10) any default under any other agreement between the Parties.

"Delivery Point(s)" means the physical point(s) specified in a Transaction at which Seller shall deliver, or cause to be delivered, Electricity to Buyer.

"Electricity" means electric energy (expressed in MWh) and any related components thereto or products specified in a Transaction.

"Electronic Communication" means communication conducted by electronic means whereby electronic records are created, including without limitation, electronic mail and instant messaging.

"Force Majeure" means events or circumstances, beyond the reasonable control of a Party and not caused, in whole or in part, by the negligence of such Party, which prevent that Party from performing its obligations under this Agreement, and which the Party claiming Force Majeure is unable to avoid or prevent through the exercise of due diligence. Force Majeure includes, without limitation, a Force Majeure affecting an RTO or Buyer's Local Utility that in turn prevents a Party's performance of its obligations hereunder, including, but not limited to: fire, strike, embargo, explosion, power failure, flood, lightning, war, water, electrical storms, labor disputes, civil disturbances, governmental regulations, orders, decrees, enforcement actions or other requirements, acts of civil or military authority, acts of God, acts of public enemies, inability to secure replacement parts or materials, transportation facilities, or other causes beyond its reasonable control, whether or not similar to the foregoing. A claim of Force Majeure may not be based on: (1) Buyer's inability to economically use or dispose of Electricity purchased under this Agreement; (2) Buyer's closure or material curtailment or discontinuation of operation of any of Buyer's Facilities due to economic circumstance or condition; or (3) Seller's ability to sell Electricity at a price greater than the Contract Price.

"Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Transaction, determined in a commercially reasonable manner.

"Governmental Entity" means a municipality, county, governmental board, governmental department, commission, agency, bureau, administrative body, joint action agency, court, or other similar political subdivision or public entity or instrumentality of the United States or one or more states.

"Imaged Document" means any document generated by the Parties which is scanned and stored in electronic form, including, by way of illustration and not limitation, portable document format (.pdf) or similar type (e.g. jpg, tiff, gif).

"Interest Rate" means two percent (2%) per annum over the prime-lending rate as published in *The Wall Street Journal* under "Money Rates"; provided that, the Interest Rate may never exceed the maximum rate permitted by Law.

"Law" means any law, constitution, charter, statute, ordinance, code, rule, regulation, tariff, protocols, decision, order, decree, judgment or other legislative or administrative action of any Governmental Entity, or any interpretation thereof by any court, agency or instrumentality having jurisdiction, as well as all rules, policies and procedures lawfully adopted by an RTO governing or controlling the area in which Buyer's Facilities are located.

"Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Transaction, determined in a commercially reasonable manner.

"MWh" means a megawatt-hour of Electricity.

"Off-Peak Hours" means hours not defined as On-Peak Hours.

"On-Peak Hours" means hours determined to be "on peak" by Buyer's regional reliability council of the North American Electric Reliability Council, or any successor entity, governing the area in which Buyer's Facilities are located.

"RTO" means a power pool, independent system operator, transmission provider, or Buyer's Local Utility acting as the grid manager, or any comparable entity that provides system management and oversight for Electricity delivered to Buyer's Facilities.

"Settlement Amount" means, with respect to a Transaction, the Losses or Gains, and Costs, which the non-defaulting Party incurs as a result of the termination of such Transaction.

"Set-off" means offset, combination of accounts, netting, right of retention or withholding, or any similar right.

"Start Date" means the date specified in a Transaction; provided, that if a Transaction does not specify such a date, then the date upon which all of the conditions set forth under Articles 4.1(1)-(2) are satisfied.

"Taxes" means all federal, state and local taxes, assessments, levies, duties, fees, charges or withholdings of any kind, including gross receipts taxes, utility and regulatory taxes, assessments and surcharges however denominated and all penalties, fines, additions to tax, or interest on unpaid taxes.

"Termination Payment" has the meaning set forth in Article 7.3.

"Transaction" means an agreement between the Parties for the purchase and sale of Electricity pursuant to this Agreement, which may include, among other terms, the Electricity product, Contract Price, delivery term, Contract Quantity and Delivery Point(s).

"Transaction Addendum" means, in respect to a specific Transaction, a supplement to, or modification of, this Agreement signed, or deemed accepted, by both Parties setting forth the terms of such Transaction.

"Voice Record" means a recorded telephone conversation between representatives of the Parties evidencing the terms of a Transaction.

ARTICLE 12: MISCELLANEOUS

12.1 Definitions. When the singular number is used, it is deemed to include the plural and vice versa. The words "include" and "including" mean "including, without limitation" with respect to whatever follows.

12.2 Confidentiality. This Agreement, each Transaction, and all confidential business information of the Parties in connection with the Agreement are strictly confidential and shall not be disclosed by a Party (except to such Party's Affiliates, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have agreed to treat such information as confidential) without the prior written consent of the other Party, except as required by Law; provided that Seller may publicize the existence of this Agreement in press releases and sales and marketing materials, and identify Buyer as a customer of Seller and as a reference to third parties. The Parties agree that damages would be an inadequate remedy for breach of this provision and that either Party is entitled to equitable relief in connection herewith, provided that any damages are limited to actual damages as provided herein.

12.3 Notices. Unless otherwise specified herein, any notice required or permitted under this Agreement, must be in writing and addressed as provided in Article 13. Notice by receipt confirmed facsimile, email or hand delivery shall be effective on the Business Day actually received. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent.

12.4 Entire Agreement. This Agreement contains the complete understanding between the Parties and supersedes all previous discussions, communications, writings and agreements previously executed between the Parties related to the sale and purchase of Electricity. In addition, if the Parties have outstanding Addenda or appendices under an agreement that is superseded by this Agreement, those Addenda and appendices shall be governed by this Agreement. Except to the extent otherwise provided for herein, this Agreement may not be amended, modified or supplemented except in a writing signed by both Parties.

12.5 Assignment. This Agreement (including any Transaction, or portion thereof) may not be assigned or transferred by a Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, except it may be assigned or transferred without such approval: (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets (including, without limitation, all or a substantial portion of Seller's portfolio of retail supply contracts) of the transferring Party, whether by merger or acquisition, (ii) by either Party to any Affiliate; or (iii) by Seller in connection with any financing or other financial arrangements involving the accounts, revenues or proceeds hereof; provided, that in the case of items (i) and (ii), the assignee or transferee is at least as creditworthy as the assigning

or transferring Party and such assignee or transferee agrees in writing to be bound by the terms and conditions of this Agreement (including all outstanding Transactions). Notwithstanding anything to the contrary in this Agreement, Buyer agrees that Seller may require any approved assignee or transferee to execute a new Electricity Sales and Purchase Agreement, Transaction Addendum and/or appendix with Seller, as the case may be, as a condition precedent to the assignment or transfer of any (whole or partial) Transaction

12.6 Disputes. If an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing Party.

12.7 Waiver. No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.

12.8 Third Party Beneficiaries. This Agreement does not grant, create or otherwise provide any rights enforceable by any person or entity not a Party to this Agreement.

12.9 Controlling Documents. This Agreement and all Transactions (including any Addenda) form a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and any terms of a Transaction shall be resolved in favor of the terms of such Transaction. Upon full execution (or deemed acceptance) of a Transaction Addendum, such Transaction Addendum (absent manifest error) shall control in the event of any conflict with the terms of a Voice Record or Electronic Communication, or in the event of any conflict with the terms of this Agreement. In the absence of a Transaction Addendum, the Voice Record or Electronic Communication shall evidence the terms of the Transaction.

12.10 Electronic Communications. Each Party hereby consents to the recording and storage of Voice Records and Electronic Communication and waives any objection to recording of Voice Records and use of Electronic Communication. An Electronic Communication record shall be deemed received upon arrival at the receiving Party's electronic mailbox or internet address.

12.11 Governing Law and Venue. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE DELIVERY POINTS ARE LOCATED (I.E., DELAWARE); PROVIDED THAT IF THE DELIVERY POINTS ARE IN MORE THAN ONE STATE, THEN THIS AGREEMENT SHALL BE GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS ARTICLE 12.11 SHALL SURVIVE THE

EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in New Castle County, Delaware (and each Party hereto waives any right to object to venue in this regard).

12.12 Immunity. Buyer covenants that if it is a Governmental Entity it shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Buyer further covenants that if it is a Governmental Entity it shall obtain all necessary budgetary approvals, appropriations, and funding for all of its obligations under this Agreement, the failure of which shall not be an excuse for Buyer's performance hereunder.

12.13 Severability; Survival. Any provision declared or rendered unlawful, invalid, void or unenforceable by any applicable court of law or regulatory agency will not otherwise affect any other provision, agreement, covenant or remaining lawful obligations under this Agreement; provided, that in any such event, the Parties shall use good faith efforts to reform this Agreement in order to give effect to the original intention of the Parties. All obligations of the Parties that must survive termination of this Agreement or any Transaction Addendum in order to give effect to the intent of the Parties shall survive such termination.

12.14 Execution. This Agreement may be signed in counterparts, each of which will constitute an original and together will constitute one and the same Agreement. The Parties agree that if a copy of this Agreement, including any appendix and/or Transaction Addendum, is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

12.15 Imaged Document. The Parties agree that if a copy of this Agreement, including any appendix and/or Transaction Addendum, is executed by a Party and transmitted to the other Party in the form of an Imaged Document, to which a Party has affixed its written or electronic signature, the copy received by the other Party shall be deemed for all legal purposes to be as valid and authentic as an original executed by the transmitting Party, and will be given the same legal effect as a written and signed paper original, and may be introduced as evidence in any proceeding as if such were original business records. Neither Party shall contest the admissibility of such Imaged Documents as evidence in any proceeding, and waive any objection they may have to the use of same.

12.16 Discrimination. In the performance of this Agreement, the Parties agree that they shall not discriminate, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

12.17 Records. The Seller shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed

necessary by Buyer to ensure proper accounting for all project funds.

12.18 Business License. If required by City of Wilmington law and upon ninety (90) days' advance written notice by Buyer to Seller, Seller shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

12.19 Taxes. The Seller shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City of Wilmington wage tax law.

ARTICLE 13: NOTICES

Legal Notices

Notices and payments shall be made by facsimile, email, courier, first class mail, or hand delivery. Notice should be sent to the addresses noted below, or any other address a Party provides to the other Party in writing:

If To Buyer

Attention	Commissioner of Public Works
Address	City of Wilmington 800 North French Street, 6 th Floor
City, State, Zip	Wilmington, DE 19801
Telephone / Fax	/
E-Mail	

If To Seller

Attention	Contract Manager
Address	1500 Rankin Rd., Suite 200
City, State, Zip	Houston, TX 77073
Telephone / Fax	281.653.5090 / 281.653.1810
E-Mail	info@championenergyservices.com

Article 14: Execution and Signatures

This Agreement will be binding if Seller and Buyer have each signed below and shall be effective as of the Effective Date specified above. The Parties intend that this Agreement shall not bind either Party unless it is executed by both Parties.

Buyer: City of Wilmington

By:

(Signature)

(Name)

(Title)

Seller: Champion Energy Services, LLC

By:

(Signature)

(Name)

(Title)

Electricity Sales and Purchase Agreement Rev. 04.08.2022



MASTER RETAIL ELECTRICITY SUPPLY AGREEMENT

This Master Retail Electricity Supply Agreement ("**Master Agreement**" or "**Agreement**") is entered as of _____, 2026 ("**Effective Date**") by and between City of Wilmington, Delaware ("**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. A conflict shall only exist if this MSA and the applicable TC contain directly contradictory terms; if this MSA contains a term and the applicable TC is silent on the issue, that shall not constitute a conflict. 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. Notwithstanding anything to the contrary in the foregoing, the term of this Master Agreement shall not exceed the period of five (5) years from the Effective Date.

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. Notwithstanding anything to the contrary in the foregoing, the term of any TC shall not exceed the period of five (5) years from the Effective Date.

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 30th 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 0.5% 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. During the term of this Agreement and for a period of two (2) years thereafter, the parties shall maintain such books and records as are necessary to substantiate that all invoices, adjustments and claims submitted by Constellation to Customer for payment were accurate, valid and proper.

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 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 5 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 5 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: minus (iv) any refunds due from Constellation to Customer.

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; and (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 days' prior written 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 (i.e., Delaware), 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 namely, New Castle County, Delaware (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, or, if no addresses are provided in the TC, then to the notice addresses listed on the signature page of this Master Agreement. 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 such claims of third parties representing Customer. Customer further authorizes Constellation to utilize Customer's name for publicity and marketing purposes. In the performance of this Agreement, the Parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation. If required by City of Wilmington law and upon ninety (90) days' advance written notice by Customer to Constellation, Constellation shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance. Constellation shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City of Wilmington wage tax law.
20. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of Constellation and Customer, and their respective legal representatives, successors, and permitted assigns.
21. **Signed Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.
22. **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: _____

Printed Name:

Title:

Date: _____

Address:

Phone:

Facsimile:

Signature:

Printed Name:

Title:

Date:

Customer Authorized Persons:

Printed Name:

Title:

email:

Phone:

Notices for Customer:

City of Wilmington

Department of Public Works

800 N. French Street, 6th Floor

Wilmington, DE 19801

Attn: Commissioner

Constellation Authorized Persons:

Commodities Management Group: 1-800-243-2113; cmg@constellation.com

Transaction Group: #emailtransactions@constellation.com

Notices for Constellation entities:

Address: 1001 Louisiana Street

Constellation Suite 2300

Houston, TX 77002

Phone: (844)-6-ENERGY

Facsimile: