

Model Agreement
Westborough, MA

November 4, 2015

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Preamble

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

WHEREAS, the Town of Westborough (the Municipality) has developed an electricity supply program ("Program") to aggregate the electric loads of consumers located within the Municipality and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the Municipality has received approval of its Program from the Massachusetts Department of Public Utilities ("Department");

WHEREAS, Constellation Energy Power Choice, Inc., a Delaware corporation, having an address of 1221 Lamar St. Suite 750, Houston Texas 77010, duly authorized to conduct business in the Commonwealth of Massachusetts ("Competitive Supplier"), desires to provide All-Requirements Power Supply to consumers located within the Municipality, pursuant to the terms and conditions of the Program and this Competitive Electric Service Agreement ("Agreement"); and

WHEREAS, the Municipality desires that the Competitive Supplier provide All-Requirements Power Supply as an alternative to Basic Service for consumers within the Municipality.

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

ARTICLE 1 DEFINITIONS

Capitalized terms that are used but not defined in the body of this Agreement, including the Exhibits hereto, shall be defined as set forth in this Article I. The words defined in this Article I shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined in this Article I shall be given their common and ordinary meanings.

1 Agreement – This Competitive Electric Service Agreement.

1.1 Aggregation Plan - The Town of Westborough Aggregation Plan, as adopted or amended by the Municipality from time to time.

1.2 All-Requirements Power Supply – The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission to the Point of Delivery, distribution losses, congestion management, and

all other services or products necessary to provide firm power supply to Participating Consumers at the Point of Sale in accordance with this Agreement. This supply service also includes any costs associated with meeting "Renewable Portfolio Standards" ("RPS") at the levels required by currently applicable law.

1.3 Bankruptcy – With respect to a Party, such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule, and such proceeding is not dismissed within ninety (90) days after the commencement thereof, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal, or otherwise, within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any stay of such appointment, has not been vacated.

1.5 Basic Service – Electric supply service by the LDC as defined in M.G.L. c. 164, § 1 and in orders of the Department, as amended or promulgated, as the case may be, from time to time.

1.6 Business Day – Monday thru Friday except the following state holidays in MA: New Year's Day, Martin Luther King Day, Presidents Day, Patriots Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

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

1.8 Competitive Supplier - Constellation Energy Power Choice, Inc a corporation having an address of 1221 Lamar St. Suite 750, Houston Texas 77010, duly authorized to conduct business in the Commonwealth of Massachusetts being the entity identified as such in the Preamble of this Agreement.

1.9 Intentionally Omitted.

1.10 Credit Rating – With respect to the Competitive Supplier, its senior unsecured, unsubordinated long-term debt rating, not supported by third party credit enhancement, and if such debt is no longer rated, then the corporate or long-term issuer rating of Competitive Supplier or Competitive Supplier's Guarantor;

1.11 Customer Service Policies and Practices – Has the meaning set forth in Exhibit D.

1.12 Delivery Term – The period for which prices for All-Requirements Power Supply have been established, as set forth in Exhibit A.

1.13 DOER – The Massachusetts Department of Energy Resources.

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

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

1.16 Effective Date – The date on which this Agreement is executed by the Parties (or, if the Parties execute on different dates, the date on which the last Party to execute the Agreement has executed such Agreement).

1.17 Eligible Consumers – (i) Residential, commercial, industrial, municipal, and/or other consumers of electricity who receive Basic Service from the LDC as of the Effective Date, at one or more locations within the geographic boundaries of the Municipality; or (ii) New Consumers; or (iii) consumers within the Municipality that are supplied by third party suppliers at the inception of the Program and are therefore ineligible, but that subsequently become eligible when those third party supply contracts lapse. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date.

1.18 FERC – The Federal Energy Regulatory Commission.

1.19 Force Majeure – Any cause not within the reasonable control of the affected Party that, through no fault of the affected Party, precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; industrial disturbances; acts of a public enemy; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

1.20 General Communications – The type of communications described and defined in Article 7.6 herein.

1.21 Governmental Authority – Any national, state or local government or political subdivision thereof, independent system operator, regional transmission owner or operator, or any other governmental, judicial, regulatory, legislative, public or statutory instrumentality, authority, body, agency, department, bureau, board, commission, or entity.

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

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

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

1.25 LDC – Local distribution company, or any successor company(ies) or entity(ies) providing electricity distribution services in the Town.

1.26 NEPOOL – The New England Power Pool.

1.27 New Consumers – Residential, commercial, industrial, municipal, or other consumers of electricity that become customers of the LDC after the date of the initial Opt-out Notice and are initially placed on Basic Service.

1.28 New Consumer Notice – Has the meaning set forth in Section 5.2.

1.29 New Taxes – Any taxes enacted by any Governmental Authority after the Effective Date or by any Governmental Rule effective after the Effective Date resulting in the application, for the first time, of any tax to Participating Consumers with respect to All-Requirements Power Supply.

1.30 Opt-In Procedure – The procedure for enabling Eligible Consumers to affirmatively elect to take supply pursuant to the Program, which procedure is more fully described in Exhibit C.

1.31 Opt-Out Notice – Has the meaning set forth in Article 5.1.

1.32 Opt-Out Procedure – The procedure that enables Eligible Consumers to affirmatively elect not to participate in the program and either remain on or revert to Basic Service, which procedure is more fully described in Exhibit C.

1.33 Participating Consumers – Eligible Consumers enrolled in the Program. Eligible Consumers who have opted out of the Program are not Participating Consumers.

1.34 Parties – The Municipality and Competitive Supplier, as the context requires. In the singular, “Party” shall refer to either one of the Parties.

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

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

1.37 Program – Town of Westborough Consumer Choice Power Supply Program implemented pursuant to the Aggregation Plan.

5. Regulatory Event– A change in a Governmental Rule by a Governmental Authority. A “change” as used herein may include, without limitation, any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness of a Governmental Rule by a Governmental Authority, or any change in construction or interpretation of a Governmental Rule by a Governmental Authority, AS WELL AS the implementation of new, or changes to existing, GOVERNMENTAL RULES, or changes in administration or interpretation of Governmental Rules..

1.38

1.39 Related Documents - Aggregation Plan and all Exhibits included herein.

1.40 Retail Price – As set forth in Exhibit A.

1.41 Service Commencement Date – The date of the Participating Consumers’ first meter read date after January 31, 2016 as may be reasonably extended due to Force Majeure Events or due to act or omission of the LDC

1.42 Service Contracts – Has the meaning set forth in Section 7.3.

1.43 Small Commercial Customer – Has the meaning set forth in Section 5.3.

1.44 Term – Has the meaning set forth in Article 6.1.

1.45 Very Large New Customer – Has the meaning as set forth in Section 5.2.

ARTICLE 2 CONDITIONS PRECEDENT

2.1 The Municipality’s obligations under this Agreement shall be conditioned upon the Competitive Supplier fulfilling the following requirements:

- a) maintain its Competitive Supplier license from the Department;
- b) execute a competitive electric supplier service agreement with the LDC in a form reasonably satisfactory to Competitive Supplier;
- c) execute any appropriate ISO-NE applications and agreements;

- d) obtain authorization from the FERC to sell power at market-based rates; and
- e) complete EDI testing with the LDC.

If Competitive Supplier has not fulfilled all such requirements by the Service Commencement Date, the Municipality may terminate this Agreement without any liability.

ARTICLE 3 RIGHTS GRANTED

3.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Participating Consumers pursuant to the terms of the Program and this Agreement. For the avoidance of doubt, Competitive Supplier shall be authorized to supply All-Requirements Power Supply only to Participating Consumers, and the LDC will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Basic Service. Competitive Supplier recognizes and agrees that this Agreement does not guarantee that any individual Eligible Consumer will be served by the Competitive Supplier.

In accordance with Article 5 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out. In the event the geographic boundaries of the Municipality change during the term of this Agreement, Competitive supplier shall only be obligated to supply All-Requirements Service to those Participating Consumers located within the Municipality as such boundaries existed on the Effective Date. The Competitive Supplier has the sole obligation of making all necessary and appropriate arrangements, including, without limitation, with the LDC, and the ISO-NE, to ensure that Participating Consumers receive, at the Point of Sale, the electricity to be supplied by the Competitive Supplier pursuant to this Agreement.

The Municipality specifically authorizes the LDC to provide to Competitive Supplier all billing and energy consumption information for Participating Consumers as is reasonably available from the LDC, which Competitive Supplier may receive and use in fulfillment of its obligations under this Agreement. Competitive Supplier shall request consumption data for individual Participating Consumers from the LDC via EDI. If further action is required by the LDC to authorize Competitive Supplier to receive such consumption and billing data, upon request of Competitive Supplier, the Municipality agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier in obtaining such information for Participating Consumers. Competitive Supplier shall not be responsible for any errors that Competitive Supplier makes in the provision of All-Requirements Power supply to the extent such errors are caused by unknown errors or omissions contained in the information provided to it by the LDC. I

ARTICLE 4 ROLE OF THE MUNICIPALITY

4.1 ROLE OF Municipality

Notwithstanding anything to the contrary in this Agreement, the Municipality shall not receive, take title to, or be liable or responsible for the supply or delivery of, or the payments for, any All-

Requirements Power Supply. It is and shall remain the sole obligation of the Competitive Supplier to arrange for delivery of All-Requirements Power Supply to Participating Consumers.

The Parties specifically agree that the role of the Municipality is to:

- i) notify Competitive Supplier of any Municipality-imposed contractual terms and conditions under which All-Requirements Power Supply is to be provided by the Competitive Supplier under this Agreement;
- ii) reasonably assist the Competitive Supplier as set forth in Section 3.1, above, and Section 7.9 below, of this Agreement;
- ii) oversee the public education program provided that such responsibility shall not relieve the Competitive Supplier of its obligations, if any, set forth in this Agreement with respect to such program; and
- iii) approve the opt out notice to be prepared by the Municipality;
- iv) to the extent the Municipality elects, in its sole discretion and without having the obligation to do so and without creating any rights on behalf of any third party, act as consultant and advocate for Eligible Consumers with respect to the matters addressed in this Agreement.

Both Parties expressly agree that the remedies available to the Competitive Supplier in the event of Municipality default are limited to the specific performance remedy described in Article 6

4.2 CLAIMS OF ELIGIBLE/PARTICIPATING CONSUMERS

The Municipality is authorized under G.L. c. 164, § 134, to act on behalf of the Eligible Consumers in contracting for electric supply for such Eligible Consumers under the Program, and may consult with and communicate with any or all Eligible Consumers and Participating Consumers in connection therewith. Nothing in this section is intended to create any rights under this Agreement on behalf of any third party.

4.3 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges and agrees that, as between the Municipality and Competitive Supplier, the Municipality shall have exclusive ownership of all right, title, and interest in and to all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available by any person or entity to Competitive Supplier, in connection with or as a result of this Agreement. Competitive Supplier shall use Eligible Consumer data solely to provide All-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this Agreement, and for no other purpose. Any other use of Eligible Consumer data without the prior written consent of the Municipality is strictly prohibited. Pursuant to such authorized use, Competitive Supplier may share such Eligible Consumer data with third-party vendors and other independent contractors as REASONABLY necessary to accommodate Competitive Supplier's provision of All-Requirements Power Supply or other performance pursuant to this Agreement (including, without limitation, collection of receivables), provided that Competitive Supplier will inform any such vendor of the confidential nature of such data and impose upon them the use restrictions set forth in this Article 4.3 and elsewhere in this Agreement. Except AS REASONABLY NECESSARY in connection with the performance of this Agreement, or unless otherwise provided in this Agreement, Competitive Supplier shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the

extent that the provision of All-Requirements Power Supply or other services under this Agreement requires that Competitive Supplier have access to or make use of any Eligible Consumer data, Competitive Supplier shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing to Eligible Consumers regarding electric supply services under the Program, but only during the term of this Agreement and subject to the terms set forth in Article 19.2. A material violation of this Article 4.3 shall be grounds for termination under Article 6.2. Competitive Supplier agrees violation of this Article 4.3 shall constitute irreparable harm.

ARTICLE 5 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

5.1 CONSUMER CHOICE AND OPT OUT RIGHTS AT PROGRAM INCEPTION

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to M.G.L. c. 164, § 134 and the Program, to change their source of electricity supply, as set forth in Article 5. The Parties shall not intentionally interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of the Department, the LDC and/or other lawful Governmental Authority regarding the procedures for opting out of the Program, or switching from one source of electric supply to another. Notwithstanding the foregoing, however, the Parties may take lawful, Commercially Reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the Program, subject to any Governmental Rules.

All Eligible Consumers will, as of the Service Commencement Date, be automatically enrolled in the Program under the terms of this Agreement unless they opt-out. The Municipality shall provide to Competitive Supplier a list of all Eligible Consumers as of the Effective Date, as well as such Eligible Consumers' service and billing addresses. Competitive Supplier shall notify each such Eligible Consumer:

- (i) about the Program;
- (ii) of the date on which such Eligible Consumer will be automatically enrolled in the Program; and
- (iii) that the Competitive Supplier will be providing All-Requirements Power Supply to such Eligible Consumer as of the same date, subject to the opt-out provisions of the M.G.L. c. 164, § 134, the Plan; and
- (iv) of the Opt-Out Procedure described in Exhibit C.

The Municipality shall specify the design and content of the Opt-Out Notice. Competitive Supplier shall review the Opt-Out Notice and notify the Town of any comments or concerns regarding the form or content of the notice. Once the design and content of the notice are finalized, Competitive Supplier shall, at its cost and in accordance with the approved design and content, prepare, print, and mail, to each such Eligible Consumer, the Opt-Out Notice at least thirty (30) days prior to the date of automatic enrollment. The Opt-Out Notice shall:

- (i) prominently state all charges to be assessed by the Competitive Supplier,
- (ii) provide a summary of the prices and terms included in Exhibit A;
- (iii) fully disclose the prices and terms then being offered for Basic Service by the LDC;

- (iv) state how such Eligible Consumer may opt-out of the Program prior to enrollment and remain on Basic Service from the LDC;
- (v) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Basic Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier; and
- (vi) include a postage-paid reply card that customers may use to exercise their opt-out rights.

Competitive Supplier shall commence All-Requirements Power Supply as of the Service Commencement Date to such Eligible Consumers that have not exercised their right to opt out. All such Consumers shall then be deemed Participating Consumers and shall be entitled to receive supply at the prices listed in Exhibit A and pursuant to the terms and conditions of this Agreement.

5.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS

In accordance with the requirements of any applicable Governmental Rules, and within a reasonable time after the LDC notifies Competitive Supplier of the existence of a New Consumer (the "New Consumer Notice") and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing All-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the M.G.L. c. 164, § 134, the Plan, and the Program Opt-Out Notice. Competitive Supplier shall mail an Opt-Out Notice (as described in Article 5.1) to each such New Consumer at least thirty (30) days prior to the date of automatic enrollment. If the New Consumer is in the largest industrial rate class, Competitive Supplier may contact such new consumer and reasonably determine if such New Consumer is expected to consume more than 1,000,000 kWhs per year. If Competitive Supplier reasonably determines, within 5 business days of receiving the New Consumer Notice from the LDC, that such customer is expected to consume more than 1,000,000 kWhs per year, such consumer shall be designated a "Very Large New Consumer."

Any New Consumer, other than a Very Large New Consumer, that does not elect to opt-out of the Program as provided in this section will be automatically enrolled by Competitive Supplier in the Program, will be deemed a Participating Consumer, and shall be entitled to receive supply at the prices listed in Exhibit A pursuant to the terms and conditions of this Agreement. Promptly after determining that a New Consumer is a Very Large New Consumer, Competitive supplier shall quote a price at then prevailing market rates. If the price is acceptable to such Very Large New Consumer, the Competitive Supplier will assist such consumer with the Opt In procedure described in Exhibit C. Once enrolled in the program, the Very Large New Consumer shall be deemed a Participating Consumer and be entitled to receive supply at the market price quoted by the Competitive supplier pursuant to the terms and conditions of this Agreement.

5.3 CONSUMERS SUPPLIED BY THIRD PARTIES CONSUMERS SUPPLIED BY THIRD PARTIES

Consumers being served under other competitive supply programs offered by third parties are not eligible to participate in the Program and will not be automatically enrolled as Participating Consumers under this Agreement at the inception of the Program. If any such consumer terminates its third party supply agreement, they will then be eligible to participate in the Program. Any such residential customer or small commercial customer ("small commercial" is defined to mean a non-residential consumer who at the time of Opting In is determined to have a historical demand, for the preceding 12 months, of less than 10 kW) may affirmatively opt-in to the Program and pay the same price that is offered to New Consumers. All other consumers are entitled to participate at then prevailing market rates. The Competitive Supplier shall follow the procedure described in Section 4 of Exhibit C to enroll consumers pursuant to this section 5.3. Promptly after receiving notice of the interest of any Consumer described in this section, the Competitive Supplier shall quote a price for participation in the Program, at the price listed in Exhibit A for residential and small commercial consumers, and at then prevailing market rates for all other consumers described in this section. Once enrolled in the Program, such consumer shall be deemed a Participating Consumer and be entitled to receive supply at the price quoted by the Competitive Supplier and otherwise pursuant to the terms and conditions of this Agreement.

5.4 CONSUMERS THAT OPT OUT AND THEN OPT BACK IN

Any Consumer that elects to opt out of the Program may subsequently elect to opt back in. Promptly after receiving notice of the interest of such consumer in the Program, the Competitive Supplier shall quote a price for participation in the Program at then prevailing market rates. If the price is acceptable to such consumer, the Competitive Supplier will assist the consumer with the Opt In procedure described in Exhibit C. Once enrolled in the Program, such consumer shall be deemed a Participating Consumer and be entitled to receive supply at the market price quoted by the Competitive supplier pursuant to the terms and conditions of this Agreement.

5.5 ENROLLMENT

The Competitive Supplier shall be responsible for enrolling all Eligible Consumers through EDI transactions submitted to the LDC for initial enrollment in the Program and for all subsequent enrollments of Eligible Consumers during the term of this Agreement, all in accordance with the procedures outlined in Exhibit C.

5.6 ERRORS OF LDC

In providing the notifications and conducting the activities set forth in this Article 5, the Competitive Supplier may reasonably rely upon information provided to it by the LDC for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors or omissions in connection with its notification of Eligible Consumers resulting from unknown errors or omissions contained in the information provided to it by the LDC.

ARTICLE 6 TERM OF CONTRACT AND TERMINATION

6.1 TERM

This Agreement shall commence on the Effective Date, *provided, however,* that Competitive Supplier's obligation to provide All-Requirements Power supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read date after January 31, 2018 unless terminated earlier under Article 6.2 below ("Term"). *provided, however,* the Competitive Supplier will only begin service to Participating Consumers

after such Participating Consumer has been enrolled by the Competitive Supplier and the Participating Consumer has been switched by the Local Distribution Company to the Competitive Supplier in accordance with all Governmental Rules. The Municipality shall provide reasonable cooperation in executing any document required to obtain access or authorizations, as reasonably requested by Competitive Supplier, in order to permit the enrollment and servicing of Participating Consumers in the Program.

6.2 TERMINATION

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

- a) by either Party if the other Party fails to remedy or cure its breach of any material provision or material condition of this Agreement (excluding the failure to provide or arrange for All Requirements Power Supply, which is addressed in Article 6.2(c)), within sixty (60) days following written notice to do so by the non-breaching Party; or
- b) by either Party if this Agreement or any material provision or material condition of this Agreement be finally adjudged invalid by any court or tribunal of competent jurisdiction, or if the Department or Government Authority exercises any lawful jurisdiction so as to invalidate or disapprove this Agreement in whole or in significant part; or
- c) by the Municipality in the event of the failure of the Competitive Supplier to provide or arrange for All-Requirements Power Supply to Participating Consumers unless and only to the extent that such failure is the direct result of *Force Majeure* or the Municipality's material default of this Agreement; *provided, however*, that the Municipality shall not be permitted to terminate this Agreement if the Competitive Supplier's failure to provide or arrange All-Requirements Power Supply is entirely a direct result of actions or non-actions by any transmission service provider, the LDC, or the ISO-NE. No delay by either Party in enforcing any of its rights hereunder shall be deemed a waiver of such rights; nor shall such a waiver of one default be deemed a waiver of any other subsequent default; or
- d) by the Municipality in the event of the Bankruptcy of the Competitive Supplier or its Guarantor.

6.3 OBLIGATIONS UPON TERMINATION

Following termination of this Agreement, the Parties obligations under this Agreement shall cease, except that each Party shall remain responsible for any liabilities that arose prior to the date of termination of this Agreement, and all rights and privileges granted to, and obligations imposed on, the Competitive Supplier shall be extinguished, with the exception of the right to collect all monies due from Participating Consumers for services rendered to such consumers through the date of termination.

The Parties expressly agree that the remedies available to the Competitive Supplier in the event of Municipality default are limited to the specific performance as described in this Article 6.

In the event of any default by the Municipality, therefore, the Parties expressly agree that Competitive Supplier is not eligible to seek recovery of any monetary damages or other losses

from the Municipality.

Nothing herein is intended to create any rights under this Agreement in any third party.

6.4 SPECIFIC PERFORMANCE

Notwithstanding any other provision herein, the Parties agree that if the Municipality, after receiving a default notice, and after the opportunity to cure that default within the cure periods described in section 6.2(a), fails to cure the default Competitive Supplier shall be entitled to seek specific performance of this Agreement and this shall be Competitive Supplier's sole and exclusive remedy for any default of the Municipality. The Parties acknowledge and agree that because monetary damages are not available to Competitive Supplier under this Agreement, there is no remedy at law adequate to compensate Competitive Supplier for a material default of the Municipality under section 6.2(a), and further agree that Competitive Supplier may suffer, in the event of such a default, irreparable harm.

6.5 EXTENSION

This Agreement may be extended beyond the expiration date of the Term by written, signed amendment to this Agreement. Any new pricing terms shall be included in such amendment. Upon any such extension, this Agreement shall continue to be in effect throughout the extension period set forth in the amendment, and all provisions of this Agreement, as amended by the Amendment, shall retain the same force and effect as before the extension, unless earlier terminated by either Party pursuant to the provisions of Article 6.2 or until the date stated in such extension.

ARTICLE 7 CONTINUING COVENANTS

The Competitive Supplier agrees and covenants to perform each of the following additional obligations during the term of this Agreement.

7.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the Term, each Party shall prudently and efficiently carry out its obligations under this Agreement. In addition, Competitive Supplier shall employ an adequate number of competently trained and experienced personnel to fulfill its responsibilities HEREUNDER, AND SHALL EXERCISE ALL REASONABLE EFFORTS TO deliver or arrange to deliver uninterrupted flow of such amounts of electricity to the Point of Delivery as are required under this Agreement. IN SO PERFORMING, COMPETITIVE SUPPLIER SHALL COMPLY with all applicable Governmental Rules and industry standards and practices for the supply of electricity to Participating Consumers. FURTHERMORE,, at all times with respect to Participating Consumers, COMPETITIVE SUPPLIER SHALL implement the good customer service policies and practices as defined in Article 7.2, and employs all Commercially Reasonable efforts, skills, practices, systems and methods in performance of its obligations.

7.2 CUSTOMER SERVICE POLICIES AND PRACTICES

The Competitive Supplier agrees to provide, or cause to be provided, Customer Service Policies and Practices to Participating Consumers as described more fully in Exhibit D. The Municipality reserves the right to post program-related information on the Municipality's website which will be available to Participating Consumers for general information, product and service

information, and other purposes.

7.3 RESPONDING TO REQUESTS FOR INFORMATION

The Competitive Supplier shall, during normal business hours (as set forth in Exhibit D), respond WITH REASONABLE PROMPTNESS AND without charge to reasonable requests of the Municipality for information or explanation regarding the matters covered by this Agreement and the supply of electricity to Participating Consumers. If such matter pertains to a particular consumer, and consumer consent is required by law, the Municipality will secure and show proof of such consent before requesting any information under this section. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation or requirement of the Department, or Attorney General regarding customer service. For clarification purposes, Competitive Supplier is not obligated to share any confidential third party information or other information considered competitively sensitive to Competitive Supplier EXCEPT IN THE MANNER PROVIDED IN THIS AGREEMENT.

7.4 ARRANGING FOR FIRM ALL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall make all appropriate arrangements with the ISO-NE, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of All-Requirements Power Supply (free and clear of any claims, liens and encumbrances) to the Point of Delivery, and shall make all appropriate arrangements to cause the LDC to deliver such electricity (free and clear of any claims, liens and encumbrances) to Participating Consumers at the Point of Sale. In the event the Competitive Supplier is unable to deliver sufficient electricity to the Point of Delivery to serve Participating Consumers, the Competitive Supplier shall promptly make all arrangements as may be necessary to continue to serve Participating Consumers under the terms of this Agreement without interruption, and shall bear any costs it may incur in carrying out these obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Consumers in the event, THROUGH NO FAULT OF THE COMPETITIVE SUPPLIER, the LDC disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by the ISO-NE) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Local Distribution Company's facilities, to maintain the safety and reliability of the Local Distribution Company's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Local Distribution Company's transmission and/or distribution circuits, *Force Majeure* or the non-payment of any distribution service costs or other such costs due for services provided by the Local Distribution Company to a Participating Consumer.

7.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Competitive Supplier shall supply electric energy to all Participating Consumers on a non-

discriminatory basis; provided, however, that the prices and other terms of such supply may vary in accordance with Article 5 or the rate classifications as appear in Exhibit A. Competitive Suppliers prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the Department and any other Governmental Authority having jurisdiction, and other applicable Governmental Rules. Competitive Supplier may not deny service to a Participating Consumer for failure to pay the bills of a third party, including the LDC, any electric company (whether engaged in the distribution, transmission, supply, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may [reasonably deny or reasonably condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Competitive Supplier, subject to any provision of law. Provision of electric energy supply to Participating Suppliers shall be subject to Competitive Supplier's standard credit policies described in Exhibit A, to the extent permitted by law and regulation.

7.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall reasonably cooperate with and assist the Municipality in the drafting and sending of messages and information to Eligible Consumers concerning the Program or any matter arising under or related to this Agreement. Competitive Supplier shall, prior to sending any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Participating Consumers (but excluding individually drafted or tailored communications responding to a specific complaint or communication of an individual consumer), provide a copy of such General Communication to the Municipality for its review (for consistency with the Municipality's purposes and goals) and approval, provided however that such approval shall not be unreasonably withheld. The Municipality shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate, or likely to mislead provided, however, that: (i) the communication shall be deemed approved if the Municipality fails to respond within seven (5) Business Days, and (ii) no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; (b) that has been approved by the Department, the DOER, or any other Governmental Authority; or (c) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) or (b) above shall require advanced review and approval (not to be unreasonably withheld) by the Municipality; and (iii) no approval or lack of approval shall relieve the Competitive Supplier of its obligations and responsibility for its actions and omissions under this Agreement.

7.7 PARTICIPATING CONSUMER LIST

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

frequency than once a quarter.

7.8 COMPLIANCE WITH LAWS

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

7.9 CONSENT

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

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

Competitive Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this Agreement, which Exhibit is hereby incorporated by reference into this Agreement.

8.2 OBLIGATION TO SERVE

, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for all Participating Consumers. Competitive Supplier, except as explicitly limited by the terms included in Article 5, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs, subject to Competitive Supplier's credit policies described in Exhibit A and to the extent permitted by law, and subject to the terms of any applicable approval or other order of the Department with respect to this Agreement.

8.3 METERING

The LDC will be responsible for all metering and the metered usage as reported by the LDC shall be the basis for all routine bills under this Agreement.

8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

8.4.1 Title

Title and risk of loss to All-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Delivery. In accordance with the Local Distribution Company's Terms and Conditions for Municipal Aggregators and Terms and Conditions for Competitive Suppliers the prices quoted in Exhibit A shall be inclusive of any and all line losses incurred on the local network transmission systems and distribution systems, as determined by the LDC.

8.4.2 Billing and Payment

Unless otherwise specified in an Exhibit to this Agreement, or agreed to by the Parties in writing, or pursuant to any REGULATORY EVENT, all billing under this Agreement shall be based on the meter readings of each Participating Consumer's meter(s) performed by the LDC and Competitive Supplier shall cause the LDC to prepare and render bills to Participating Consumers on a monthly basis, and the billing and payment terms offered by the LDC to Basic Service customers shall apply to all billing under this Agreement. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

8.4.3 Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the LDC under its distribution service tariff or local transmission costs as may be imposed by the regional power pool, ISO-NE, or individual electric utilities that have FERC transmission tariffs. The parties understand that these costs will be collected by the LDC in the same manner that such local transmission and distribution costs are collected from Basic Service customers.

8.4.4 Taxes

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

ARTICLE 9 DEVELOPMENT OR OFFERING OF RENEWABLE ENERGY SOURCES

9.1 COMPLIANCE WITH RENEWABLE PORTFOLIO STANDARD

Competitive Supplier hereby agrees that it will comply with the applicable provisions of G.L. c. 25A, §11F, §11F1/2, and any regulations, orders or policies adopted pursuant thereto.

9.2 GREEN OPTION

Competitive Supplier hereby agrees that it will incorporate the Green Option program as described in Exhibit A into Supplier's provision of All Requirements Power Supply under this Agreement and offer such program following the procedures described in Exhibit C.

ARTICLE 10 CUSTOMER SERVICE PROTECTIONS

Competitive Supplier agrees that it shall comply with the provisions of 220 C.M.R.25.0027.00, 28.00 and 29.00, as applicable to Competitive Suppliers, and any amendments thereto, and any code of conduct or policies the Department may adopt in accordance with M.G.L. c. 164, § 1F(7), AND ANY OTHER APPLICABLE GOVERNMENTAL RULES directly related to this Agreement. The Competitive Supplier shall comply with the Customer Service Policies and Practices attached as Exhibit D and incorporated by reference into this Agreement. Such written

description shall also include the Competitive Supplier's plan for maintaining "service quality standards," as that phrase is used in § 1F(7); for complying with the "affirmative choice" requirements of § 1F(7); and for handling consumer complaints, including any arbitration or dispute resolution procedures. The Competitive Supplier agrees to provide notice to the Municipality of any formal consumer complaints received from a Participating Consumer. In addition, and in accordance with the M.G.L. c. 164, § 1F(2) and 220 CMR 11.05(2)(b)(19) as such may be amended, restated, and replaced from time to time, in event of a dispute regarding an invoice or Competitive Supplier's service under this Agreement, a Participating Consumer may contact the Department, which may refer the dispute to the Massachusetts Office for Dispute Resolution for mediation of such dispute, if the amount in dispute is greater than one hundred dollars (\$100.00) and the subject of the dispute is within the Department's statutory and regulatory authority.

ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

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

ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 POWER SUPPLY INFORMATION

12.1.1 Quarterly Report of Sales

Competitive Supplier shall provide the Municipality or its consultant with a quarterly report of sales which must contain: (i) the aggregate kWh sales per month for each meter read for each of the billing periods covered by the quarterly report and (ii) the number of Participating Consumer accounts active in each meter read of the reporting period. The quarterly report will be due to the Municipality or its consultant within forty-five (45) days following the close of each month. The kWh sales and number of Participating Consumer accounts shall be listed in the report both by rate code and rate name and shall be listed separately for the "Standard Product" and any "Green Option" as shown and described on Exhibit B attached hereto. This information shall be provided in electronic format.

12.1.2 Monthly Report of Opt-Outs and Drops

Competitive Supplier shall provide the Municipality or its consultant with a monthly report of opt-outs and drops which must contain: (i) the number of Eligible Consumers that opt-out of the program and (ii) the number of Participating Consumer accounts that are dropped from the program. The monthly report will be due to the Municipality or its consultant within sixty (60) days following the close of each month. The information shall be listed in the report both by rate code and rate name and shall be listed separately for the Standard Product and any Green Option. This information shall be provided in electronic format.

12.1.3 Monthly Report of Consumer-Related Data

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form, including utility account number, billing name, billing address, service address, historical usage, demand, and ICAP data. Unless restricted by applicable

Government Rules, the Competitive Supplier will make such data available to the Municipality or its consultant within forty-five (45) days following the close of each month. This information shall be provided in electronic format.

12.1.3 Standard of Care

Competitive Supplier shall exercise reasonable care and use all Commercially Reasonable practices in preparing and providing any information or data required under this Agreement. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error in any material respect, it shall SO NOTIFY AND provide RELEVANT information or data to the Municipality or its agent within a Commercially Reasonable time.

12.2 POWER SUPPLY REPORT

Within fifteen (15) days of the end of each quarterly reporting period, Competitive Supplier shall present a copy of the current "Disclosure Label" required by the Department, pursuant to 220 CMR § 11.06, of all Competitive Suppliers to be disclosed to their Participating Consumers which includes information pertaining to Competitive Supplier's power supply and a reasonably detailed description of the sources of Competitive Supplier's power supply used to serve Participating Consumers pursuant to this Agreement. Competitive Supplier shall post the "Disclosure Label" on its web site under Town of Westborough Power Supply Program.

12.3 BOOKS AND RECORDS

Competitive Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the Department, FERC, and any other Governmental Authority. The Municipality will have access to any reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system.

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this Agreement that it files with any Massachusetts or federal agency regulating rates, service, or compliance with environmental laws, unless the Competitive Supplier is required by law or regulations to keep such reports or records confidential. Competitive Supplier may redact certain confidential aspects of such reports if it contains CONFIDENTIAL information of third parties.

ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW

13.1 CHOICE OF LAW

This Agreement and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts. Venue for any judicial proceeding involving a dispute arising from this Agreement shall be the United States District Court for Massachusetts, or Essex County Superior Court.

13.2 DISPUTE RESOLUTION

Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article 13.2 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use reasonable efforts to resolve any dispute(s) that may arise

regarding this Agreement. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of the dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may seek judicial enforcement subject to the provisions of this Agreement. Notwithstanding the foregoing, injunctive relief may be immediately sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. Furthermore, nothing in this Article shall prevent a Party from terminating this Agreement in accordance with the terms thereof notwithstanding this Article or any then-pending dispute resolution process.

ARTICLE 14 DUTY TO MITIGATE

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

Competitive Supplier shall indemnify, defend and hold harmless the Municipality and its officers, employees, officials, consultants, representatives and independent contractors (the "Indemnified Parties"), from and against any and all costs, liabilities, losses, judgments, damages, and expenses (including reasonable attorney's fees), arising out of third-party claims, demands, causes of action, suits or other proceedings and incurred by, on behalf of or involving the Indemnified Parties to the extent such claims, demands, causes of action, suits or other proceedings arise from or in connection with (i) any material breach by Competitive Supplier of its obligations, covenants, representations or warranties contained in this Agreement, or (ii) Competitive Supplier's actions or omissions in connection with its performance of this Agreement to the extent that such actions or omissions were negligent or not Commercially Reasonable. Competitive Supplier further agrees, if requested by the Municipality in writing to do so, to investigate, handle, respond to, and defend any such claim, demand, cause of action, suit or other proceeding at Competitive Supplier's expense. The indemnification obligation of Competitive Supplier set forth above is in addition to and not in limitation or in lieu of any other rights and remedies available to the Municipality. This provision shall survive the expiration or earlier termination of this Agreement.

14.2 NOTICE OF INDEMNIFICATION CLAIMS

If the Municipality seeks indemnification pursuant to this Article, it shall notify Competitive Supplier of the existence of a claim as soon as practicable after learning of such claim, describing with reasonable particularity the circumstances, if known, giving rise to such claim. In that notice, the Municipality may also request Competitive Supplier to investigate, handle, respond to and defend the Municipality against any such claim. The Competitive Supplier shall respond to the Municipality's notice within ten (10) business days of receipt of such notice with a written communication as to whether it agrees to indemnify (and, if requested by the Municipality in its notice, to provide a defense to) the Municipality for such claim. Upon written acknowledgment by the Competitive Supplier that it will assume the defense and indemnification of such claim, the Competitive Supplier may assert any defenses which are or

would otherwise be available to the Municipality.

14.3 DUTY TO MITIGATE

Each Party agrees that it has a duty to mitigate damages and covenants that it will use Commercially Reasonable efforts to minimize any damages that may be incurred as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 BY THE COMPETITIVE SUPPLIER

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

- a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;
- b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or, if such authorizations are not required by law on the Effective Date, it will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- c) the execution, delivery and performance of this 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 applicable Governmental Rule;
- d) subject to the conditions precedent set forth in Article 2, this Agreement constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with its terms, and the Competitive Supplier has all rights such that it can and will perform its obligations in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganizations and other laws affecting creditor's rights generally and general principles of equity;
- e) no Bankruptcy is pending against it or to its knowledge threatened against it;
- f) Reserved.
- g) all information furnished by Competitive Supplier in response to the Municipality's Request for Proposals for competitive electric supply services is true and accurate in all material respects to the best of the Competitive Supplier's knowledge..

15.2 BY THE Municipality

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

- a) this Agreement constitutes the legal, valid and binding obligation of the Municipality enforceable in accordance with its terms, subject to applicable laws;
- b) the execution, delivery and performance of this Agreement are within the Municipality's powers, have been, or will be duly authorized by all necessary action;
- c) the Municipality has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

- d) no Bankruptcy is pending or threatened against the Municipality, nor is the Municipality contemplating bankruptcy.
- e) Town is authorized and empowered by the provisions of the G.L. c. 164, § 134 to organize and implement the Program and has taken all action necessary to BE TAKEN BEFORE THE SIGNING OF THIS AGREEMENT IN ORDER TO establish the Program as approved by the DPU;

ARTICLE 16 INSURANCE

In order to help support the indemnifications provided in Article 14, and its other promises and covenants stated herein, Competitive Supplier shall provide and maintain throughout the term of this Agreement and any extension or renewal thereof the following insurance with companies that are authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required.

- a. Workers' Compensation Insurance as required by the laws of the Commonwealth of Massachusetts and employer's liability insurance in the amount of \$500,000.
- b. Commercial General Liability Insurance, \$1,000,000 per occurrence limit and \$2,000,000 general aggregate limit. Commercial General Liability insurance shall include personal injury liability, broad form property damage liability, products/completed operations liability and broad form contractual liability.
- c. Automobile Liability Insurance, covering all leased, owned, non-owned, and hired vehicles - Combined single limit of \$1,000,000.
- d. Excess Liability Insurance, Umbrella Form - \$5,000,000 each occurrence, which shall be following form, providing coverage over commercial general liability insurance, automobile liability insurance, and employer's liability under workers' compensation insurance.
- e. The Town shall be named as an additional insured on each such policy of Commercial General Liability Insurance, Excess Liability Insurance, Umbrella Form, and Automobile Liability Insurance.
- f. Supplier will notify the State of MA if:

any of the above policies will be cancelled or materially amended before the expiration date thereof, Competitive Supplier will mail thirty (30) days prior written notice thereof to the named certificate holder and to the before such cancellation or amendment shall take place."

Town Manager

131 Oak St.
Westborough, MA 01581

g. Certificates evidencing such insurance in five (5) copies shall be furnished to the Municipality at the execution of this Agreement. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Agreement and shall state that such insurance is as required by this Agreement. The Competitive Supplier shall make no claims against the Municipality or its officers for any injury to any of its officers or employees or for damage to its equipment arising out of work contemplated by this Agreement.

h. The Competitive Supplier shall be required to provide to the Municipality as part of each proof of insurance coverage endorsements or riders to the policies of commercial general liability insurance, automobile liability insurance, and excess liability insurance, umbrella form, that the Municipality is named as an additional insured on each such policy excluding workers' compensation/employer's liability.

i. No insurance shall be obtained from an insurer which:

- (1) is not licensed to sell insurance in the Commonwealth of Massachusetts;
- (2) is not authorized to provide insurance as an excess or surplus lines insurer, and does not have a current A.M. Best's rating of A or better; or
- (3) is a risk retention group lawfully providing insurance to its members in Massachusetts.

j. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this Agreement and shall operate as an immediate termination thereof.

k.

ARTICLE 17 CONFIDENTIALITY

Competitive Supplier acknowledges that the Municipality is subject to certain laws pertaining to the use and release of documents and records prepared or received by a public body, including without limitation, M.G.L. c. 4, § 7, cl. 26; M.G.L. c. 66, § 10; and M.G.L. c. 30A, §§ 18-25. As such, any SUCH document that is not otherwise exempted FROM SUCH LAWS, as further detailed below, shall be considered a public record under Massachusetts General Law Chapter 66 Section 10 ("Public Record Law"); and furthermore, the Parties will comply with the Public Record Law to the extent a request is made pursuant to such Public Record Law.

To the extent information shared between the Parties is not a public record and is not otherwise in the public domain as set forth below, including any consumer data that is covered by confidentiality rules and regulations of the Department, or information relating to proprietary information of the Competitive Supplier that fits within a statutory exemption under said laws (hereinafter, "Confidential Information") each Party shall comply with such laws and any other Governmental Rules addressing the confidentiality of such information. Except as otherwise provided by law, information shall not be treated as Confidential Information hereunder if such information: (i) is or becomes generally available to the public other than as a result of disclosure by the receiving Party; (ii) was in its possession prior to disclosure hereunder and which was not

acquired directly or, to the Party's knowledge, indirectly from the disclosing Party, (iii) was received from a non-party to this Agreement who to the receiving Party's knowledge, was not subject to a confidentiality agreement or fiduciary obligation regarding information; (iv) was independently developed by the receiving Party without reference to the information.

This Agreement once executed will be deemed a Public Record and treated as such.

Subject to the foregoing, the information related to this Agreement that is considered Confidential Information shall include the following:

- a) any account information related to the Participating Consumers including, without limitation, historic usage data, metering, and billing and payment information;
- b) any information regarding transactions entered into by Competitive Supplier and any third parties in connections with the provision of All-Requirements Power Supply;
- c) any list of Participating Consumers;
- d) any information disclosed by a Party during any settlement discussions that is not reduced to an executed settlement agreement;
- e) Competitive Supplier's insurance policies;
- f) any financial security instruments(s) provided by Competitive Supplier;
- g) any additional information which either Party marks as "Confidential" at the time of the release of the Information and persuasively justifies that such information fits within one of the exemptions to the Public Records Law.

Notwithstanding the above, Either Party may disclose the terms of this Agreement to its affiliates, and to its and officers, directors, employees, attorneys and accountants.

ARTICLE 18 REGULATORY EVENT/NEW TAXES

18.1 REGULATORY EVENT

If, after the Effective Date, a Regulatory Event occurs or any New Taxes are imposed, the adversely affected Party shall give WRITTEN notice to the other Party that such event has occurred whereupon this Agreement (including without limitation the pricing and other terms set forth on Exhibit A) shall be modified BY THE PARTIES to the extent necessary so that the adversely-affected Party will be REASONABLY restored to the economic position that the adversely-affected Party would have been in but for the occurrence of the REGULATORY EVENT, including that Competitive Supplier may pass through to Participating Consumers, without markup, EITHER as a separate line item or as an updated price, any increase in Competitive Supplier's cost to provide electricity that results DIRECTLY from a Regulatory Event or New Taxes, as applicable.

ARTICLE 19 MISCELLANEOUS

19.1 NO ASSIGNMENT WITHOUT PERMISSION

Other than in connection with a sale of all or substantially all of its competitive electric supply business related to this Agreement, or to a wholly owned subsidiary of the Competitive Supplier or to a wholly owned subsidiary of the Competitive Supplier's parent company. Competitive Supplier shall not assign its rights and privileges under this Agreement without the prior written approval of the Municipality, NOT TO BE UNREASONABLY WITHHELD. The

Municipality may assign this Agreement without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Town and such assignment would not in any way impair the rights and interests of Competitive Supplier under this Agreement. The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

19.2 DIRECT MARKETING

Prior to the introduction of any new product or service that Competitive Supplier desires to make available to Participating Consumers or other Eligible Consumers, Competitive Supplier agrees to (i) give the Municipality written notice of such new product or service and (ii) discuss with the Municipality the possible inclusion of such new product or service in the Program or another Municipality aggregation program. The Parties agree to negotiate in good faith the terms, conditions, and prices for such products and services that the Parties agree to include in the Program or another Municipality aggregation program.

Competitive Supplier also agrees not to engage in any direct marketing to any Participating Consumer or Eligible Consumers that uses or relies upon knowledge of, or access to, such consumers that Competitive Supplier gained, in whole or in part, as a result of this Agreement. For the purposes of this provision, "direct marketing" shall include any telephone call, text messaging, social media communications, mailing, electronic mail, or other contact between the Competitive Supplier and the Consumer. Broad-Based Programs of the Competitive Supplier that do not rely on any unique knowledge or access gained through this Agreement shall not constitute such "direct marketing." Broad Based Programs shall be defined to mean generic corporate marketing programs directed at consumers in general as opposed specific marketing efforts directed at consumers in the municipality.

19.3 NOTICES

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

If to Competitive Supplier:

Jeremy Lutes
9960 Corporate Campus Blvd., Suite 2000
Louisville, KY 40223

Chris Wade
1221 Lamar Street
Houston, TX 77010

If to Town:
Town Manager
131 Oak St.
Westborough, MA 01581

Notices hereunder shall be deemed properly served (i) by hand delivery on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if

sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any Party may change its address and contact person for the purposes of this Article 19.3 by giving written notice thereof in the manner required herein.

19.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt oral or written notice to the Municipality in the manner set forth in Article 19.3. In the event that the name or telephone number of any such contact person for the Municipality changes, prompt notice shall be given to the Competitive Supplier in the manner set forth in Article 19.3.

19.5 ENTIRE AGREEMENT; AMENDMENTS

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

19.6 FORCE MAJEURE

If by reason of *Force Majeure* either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within fourteen (14) days after the event of the *Force Majeure*, gives the other Party hereto written notice describing the particulars of the event; (ii) the suspension of the performance is of no greater scope and of no longer duration than is required by the event of *Force Majeure*; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the event; and (iv) the non-performing Party shall use all Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations and to mitigate the effects thereof. If any event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may terminate this Agreement by sending the other Party a written notice; *provided, however*, that neither the existence of such an event nor the termination of this Agreement on account thereof as aforesaid shall constitute a default of any Party and shall not give rise to any damages.

19.7 EXPENSES

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including, without limitation, all of its attorneys' fees and expenses.

19.8 NO JOINT VENTURE

Competitive Supplier will perform all services under this Agreement as an independent

contractor. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Municipality and the Competitive Supplier hereunder are individual and are neither collective nor joint in nature.

19.9 JOINT WORK PRODUCT

This Agreement shall be considered the work product of the Parties hereto, and, therefore, no rule requiring of construction of the Agreement against a Party alleged to be responsible for drafting the Agreement shall be applied against either Party.

19.10 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. Facsimiles and or copies of signatures shall be deemed originals for purposes of the execution of this Agreement.

19.11 COST RECOVERY

The Parties acknowledge that the price for energy as described in Exhibit A includes the Consultant Commission described in Exhibit A to cover the cost of developing, implementing and operating the Aggregation. The Competitive Supplier agrees to include this cost adder in the Price for energy, and to make the monthly commission payments on behalf of Participating Consumers, in the manner described in Exhibit A, and acknowledges this obligation as a material obligation of this Agreement. provided however, that (i) the obligation to pay the commission fee remains in effect only so long as this Agreement remains in full force and effect, and (ii) per the terms and conditions of Compensation Schedule pursuant to the Master Broker Agreement executed by Competitive Supplier and Consultant. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. There shall be no other third-party beneficiaries to this Agreement.

19.12 WAIVER

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

19.13 AGGREGATION PLAN

Competitive Supplier agrees that it has been provided with and had a reasonable opportunity to examine and has examined the Aggregation Plan. The Aggregation Plan, shall be construed harmoniously with this Agreement to the greatest practicable extent. Notwithstanding the foregoing, in the event of any conflict between this Agreement and the Aggregation Plan, the Agreement shall govern.

19.14 ADVERTISING LIMITATIONS

Competitive Supplier agrees not to use the name of the Municipality, or make any reference to the Municipality, in any advertising, publication, or other information to be distributed publicly for marketing or educational purposes, unless the Municipality expressly agrees to such usage. Any proposed use of the name of the Municipality must be submitted in writing for agreement and prior approval. The Municipality acknowledges that the Competitive Supplier and/or the Competitive Supplier's corporate affiliates own the exclusive rights to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

19.15 PRESS RELEASES

The Municipality reserves the right to issue press releases with respect to this Agreement and the Program in general without the prior review, approval, or agreement of the Competitive Supplier, provided that (i) the Municipality shall give three (3) business days' notice to the Competitive Supplier of any press release that mentions the Competitive Supplier by name; AND (ii) if the press release conflicts with this Agreement or makes claims about Competitive Supplier that are false or potentially damaging, Competitive Supplier shall have the right, without consent, to release its own press release clarifying the Municipality's release.. The purpose of this notice requirement is to provide opportunity to the Competitive Supplier to reasonably comment on the content of such press release and to give the Municipality the opportunity to take such comments into consideration before making the final discretionary decision regarding the content of any such press release. If a response is not received by the Municipality within such three (3) business day period, the Municipality may issue the press release.

19.16 HEADINGS AND CAPTIONS

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

19.17 SURVIVAL OF OBLIGATION

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

19.18 REMEDIES

A. General

Subject to the limitations set forth in this Article and Article 6, the Municipality and the Competitive Supplier reserve, and shall have, all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party under this Agreement.

B. Limitations

NEITHER PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, EXCEPT THAT THIS LIMITATION SHALL NOT APPLY TO CLAIMS OF INDEMNIFICATION FOR THIRD-PARTY CLAIMS UNDER ARTICLE 14, BUT ONLY TO THE EXTENT OF SUCH THIRD-PARTY CLAIMS.

NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE

APPLICABLE TO THIS AGREEMENT OR THE COMPETITIVE SUPPLIER'S PERFORMANCE HEREUNDER. THE COMPETITIVE SUPPLIER SHALL NOT BE LIABLE FOR ANY DAMAGE TO A PARTICIPATING CUSTOMER'S EQUIPMENT OR FACILITIES THAT IT DOES NOT DIRECTLY CAUSE WHILE HAVING TITLE TO THE ELECTRICITY.

19.19 COMPLIANCE WITH LAWS

By entering into this Agreement, the Parties specifically represent that they have exercised due diligence to review and have fully complied with all relevant regulations and orders of the FERC, the Department, Massachusetts Attorney General, and DOER and any other governmental authorities having jurisdiction over any element of the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, as required by the laws of the city, town or municipality and the laws, rules and regulations of the Commonwealth of Massachusetts (including but not limited to Mass. Gen. Laws ch 43, § 29) as of the respective dates set forth below.

COMPETITIVE SUPPLIER

By: [Signature]
Name: Ronnie E. Caldwell
Title: Vice President
Address: 176 Lawrence Drive, Bellevue, WI 54115
Dated: December 8, 2015

Town of Westborough

By: [Signature]
Name: James J. Malloy
Title: Town Manager
Address: 131 Oak St.
Westborough, MA 01581
Dated: November 4, 2015

Town Counsel:

Approved as to Form

By: [Signature]
Name: [Signature]
Title: [Signature]
Date: 11/4/15

**EXHIBIT A
PRICES AND TERMS
For Fixed and Level Prices**

All Prices: fixed and inclusive of all ancillary services, RPS and APS and quoted in \$ per kWh.

Standard Product: Includes statutory mix

Green Option: Includes statutory mix plus voluntary Recs described in Table 2 below

Rate Classes: One level price for all rate classes

Service Start: February 2016 Meter Reads

TABLE 1: 24 MONTH LEVEL PRICE

Read in to Read in	Feb 2016 Feb 2018	Green Premium		Total Price	
		Standard Product	Green Option	Standard product	Green Option
Blended	\$0.0921	\$0	\$0.011	\$0.0921	\$0.1031

Terms and Conditions:

- 1. Renewable Portfolio Standard:** The Competitive Supplier shall include Renewable Energy in the All Requirements Power Supply mix in both the all prices quoted above, in an amount no less than that required by any Governmental Authority, including laws, regulations or policies adopted pursuant to the provisions of G.L. c. 26A, section 11F and 11F1/2, starting with the requirement on the Start-Up Service Date, or pay all penalties imposed by any Governmental Authority related to Renewable Energy requirements.
- 2. Green Option:** The total prices quoted in Table 1 for the Green Option(which consumers may choose by Opting in) includes the purchase of RECs as specified Table 2 below:

TABLE 2 Green Option contract Lapsing in Feb 2018		
1	RECS to satisfy all requirements of the MA RPS and APS	As required
2	Additional MA Class 1 Wind RECs	20% of load
3	National Wind	RECs required to hit 100%
4	Total	100%

Competitive Supplier shall identify the technology, vintage, and location of the renewable generators that are the sources of the RECs for the Standard and the Green Option. All such RECs shall be created and recorded in the New England Power Pool Generation Information System or be certified by a third party satisfactory to the Town such as Green-e.

3. **Term:** The period of delivery of All Requirements Power Supply shall commence with Participating Consumers' first meter read date after Jan 31, 2016 and terminate with Participating Consumers' first meter read date after January 31, 2018, unless terminated earlier pursuant to Article 6 of the Agreement.
4. **Eligible Consumer Opt-Out:** Participating Consumers are free to opt-out of the Program using the procedures described in Exhibit C. There are no fees or charges for Participating Consumers to opt-out or terminate service.
5. **Competitive Supplier's Standard Credit Policy:** The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor does Competitive Supplier require any consumer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Consumer and return such consumer to Basic Service in the event that the Participating Consumer fails to pay to Competitive Supplier amounts past-due greater than sixty (60) days.
6. **Consultant Commission:** All prices quoted above include a commission fee equal to \$0.001 (1 mil) per kWh of Participating Consumers actual usage payable to Bay State Consultants, LLC, the consultant hired by the Municipality to develop, implement, and administer the Program. The Competitive Supplier agrees to include this commission fee in the Price for energy and to make the monthly commission payments on behalf of Participating Consumers, pursuant to the Master Broker Agreement signed between the Competitive Supplier and the consultant, This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

**EXHIBIT B
MONTHLY REPORT OF SALES**

Standard Product

Rate Code	Rate Name	Accounts	Customers	kWh
R-1	Res. Non-Heat/Annual	[x]	[x]	[x]
R-2	Res. Assist	[x]	[x]	[x]
R-3	Res. Space Heating	[x]	[x]	[x]
R-4	Res. Assist. Space Heating	[x]	[x]	[x]
G-1	General – Annual	[x]	[x]	[x]
G-2	General-Medium TOU	[x]	[x]	[x]
G-3	General-Large TOU	[x]	[x]	[x]
G-5	General-Comm. Heating	[x]	[x]	[x]
G-7	General TOU	[x]	[x]	[x]
R-5	Res. General-Water Heating	[x]	[x]	[x]
S-1	Street & Traffic Lights	[x]	[x]	[x]
S-2	Customer Owned Street Ltg.	[x]	[x]	[x]
Total:		[x]	[x]	[x]

Green Option

Rate Code	Rate Name	Accounts	Customers	kWh
R-1	Res. Non-Heat/Annual	[x]	[x]	[x]
R-2	Res. Assist	[x]	[x]	[x]
R-3	Res. Space Heating	[x]	[x]	[x]
R-4	Res. Assist. Space Heating	[x]	[x]	[x]
G-1	General – Annual	[x]	[x]	[x]
G-2	General-Medium TOU	[x]	[x]	[x]
G-3	General-Large TOU	[x]	[x]	[x]
G-5	General-Comm. Heating	[x]	[x]	[x]
G-7	General TOU	[x]	[x]	[x]
R-5	Res. General-Water Heating	[x]	[x]	[x]
S-1	Street & Traffic Lights	[x]	[x]	[x]
S-2	Customer Owned Street Ltg.	[x]	[x]	[x]
Total:		[x]	[x]	[x]

Note: Rate Codes and Rate Names are listed for illustration. Supplier shall list actual Rate Codes and Rate names served in the program.

EXHIBIT C
CUSTOMER ENROLLMENT, OPT-OUT, AND OPT-IN PROCEDURES FOR
MUNICIPAL AGGREGATION
National Grid Service Territory

Supplier shall comply with LDC procedures for timely processing of enrollment requests, Opt Out requests, and Opt In requests as those procedures are amended from time to time. In the event of any conflict between LDC procedures and the procedures outlined in this exhibit, the LDC procedures shall apply.

The following protocols describe the procedures for customer enrollment, opt out, and opt in. The protocols are designed to be consistent with the Local Distribution Company's Terms and Conditions for Municipal Aggregators, as amended or superseded from time to time. In the event of a conflict between these protocols and those Terms and Conditions, the Terms and Conditions shall govern.

1. Pre-Enrollment Opt-Out Notice, Pre-Enrollment Opt-Out Procedure, and Initial Enrollment

1.1. Opt-Out Notice and Reply Card

1.1.1. The Municipality shall design an Opt-Notice informing customers of the aggregation and their right to opt out and an Opt-Out Reply Card that customers may mail to exercise their opt-out right.

1.1.2. The Competitive Supplier shall print the Opt-Out Notice and Opt-Out Reply Card.

1.2. Customer List

1.2.1. After approval by the DPU and execution of the Electric Service Agreement (ESA) with a Competitive Supplier, the Local Distribution Company (LDC) will electronically transmit a Customer List, including the name, address, and existing power supply option (i.e., Basic Service or competitive supply) of each eligible consumer, to the Municipality's designated Competitive Supplier to facilitate the notification and opt-out requirements of the program.

1.3. Opt-Out Mailing Within five (5) business days of receiving the Customer List, the Competitive Supplier shall mail the Opt-Out Notice and Opt-Out Reply Card to all Basic Service customers in the Municipality

1.4. Customer Opt-Outs

During the period of thirty (30) days from the date of the postmark of the Opt-Out Notice, customers may opt-out of the aggregation by:

1.4.1. Mailing the opt-out reply card to the Competitive Supplier; or

1.4.2. Calling the Competitive Supplier's customer service number and requesting to opt out.

1.5. Customer Enrollment and Commencement of Generation Service

1.5.1. Within five (5) business days after the conclusion of the 30-day opt-out period, the Competitive Supplier shall submit an "enroll customer" transaction to the LDC for all Basic Service customers in the Municipality that did not opt out, pursuant to section 1.4.1 or 1.4.2.

1.5.2. Subject to the LDC's Terms and Conditions for Municipal Aggregators, generation service will commence as follows:

1.5.2.1. On the customer's next scheduled meter read, for customers with meter read dates at least two business days after the date of the enrollment transaction;

1.5.2.2. On the customer's subsequent scheduled meter read, for customers with meter read dates less than two business days after the date of the enrollment transaction.

1.6. Report to Municipality

Within five (5) business days after sending the "enroll customer" transactions, the Competitive Supplier shall provide the Municipality with the Customer List, with fields added for each customer indicating the date the Opt-Out Notice was mailed, whether the customer opted out, and if so the date, and whether an enrollment transaction for the customer was submitted to the LDC, and if so the date.

1.7. Undeliverable Opt-Out Notices.

If any Opt-Out Notices are returned as undeliverable, the Competitive Supplier shall make Commercially Reasonable Efforts to identify a correct mailing address and re-send the notice. If the second Opt-Out Notice is not returned, and if the customer does not opt-out within thirty (30) days from the date of the postmark of the second mailing, the Competitive Supplier shall submit an enrollment transaction for the customer no less than five (5) business days after the conclusion of the 30-day opt-out period.

2. New Customers

2.1 New Customers are customers that become customers of the LDC after the date of the initial opt-out notice, for example because they moved into the Municipality.

2.2. On a quarterly basis, the Municipality shall request that the LDC provide the Competitive Supplier with a Customer List for all New Customers in the Municipality.

2.3. Within five (5) business days after receiving the Customer List, the Competitive Supplier shall mail the Opt-Out Notice and Reply Card to all New Customers.

2.4. Within five (5) business days after the conclusion of the 30-day opt-out period for the new customers, the Competitive Supplier shall submit an "enroll customer" transaction to the LDC for all New Customers that did not opt-out within the 30-day opt-out period. If any Opt-Out Notices are returned as undeliverable, Competitive Supplier shall attempt to identify a correct address and re-send the notice as described in section 1.7.

2.5 Commencement of Service. As specified in the LDC's Terms and Conditions for Municipal Aggregators, generation service will commence as follows:

2.5.1. On the customer's next scheduled meter read, for customers with meter read dates at least two business days after the date of the enrollment transaction;

2.5.2. On the customer's subsequent scheduled meter read, for customers with meter read dates less than two business days after the date of the enrollment transaction.

2.5.3. Competitive Supplier will not be responsible for delays caused by the LDC.

3. Opt-Out After Initial Enrollment

- 3.1. Opt-Out Procedure. Subsequent to enrollment, a customer may elect to opt out of receiving generation service through the aggregation as follows:
- 3.1.1. By calling the Competitive Supplier's customer service number and requesting to opt-out, in which case the Competitive Supplier shall submit a "supplier drops customer" transaction to the LDC within one (1) business day;
 - 3.1.2. By enrolling with an unrelated competitive supplier, in which case the unrelated competitive supplier shall submit an "enroll customer" transaction to the LDC; or
 - 3.1.3. By calling the LDC and requesting to be returned to Basic Service, in which case the LDC shall submit a "customer drops supplier" transaction.
- 3.2. Effective Date
- 3.2.1 Where the customer opts out by contacting the Competitive Supplier or enrolling with an unrelated competitive supplier, the customer will no longer receive Generation service through the aggregation as of:
 - 3.2.1.1 the customer's next scheduled meter read, for customers with meter read dates at least two business days after the date of the drop or enrollment transaction;
 - 3.2.1.2 the customer's subsequent scheduled meter read, for customers with meter read dates less than two business days after the date of the drop or enrollment transaction.
 - 3.2.2 Where the customer opts out by contacting the LDC, the customer will no longer receive Generation service through the aggregation as follows:
 - 3.2.2.1 for residential customers, within two business days
 - 3.2.2.2 for other customers, as of the customer's next scheduled meter read.

4. Opt-In Procedure

- 4.1. Applicability
- 4.1.1. Customers not being served by the aggregation may opt in at any time.
 - 4.1.2. The opt in procedure applies to the following customers:
 - 4.1.2.1. Opt-out Customers. Customers that opt-out of the aggregation, either before or after enrollment; and
 - 4.1.2.2. Former Competitive Supply Customers. Customers that were not previously enrolled in the aggregation because they were served by a competitive supplier at the inception of the program.
- 4.2. Prices
- 4.2.1. Prices for opt-in customers shall be as follows:
 - 4.2.1.1. All Opt-out Customers and Former Competitive Supply Customers other than residential and small business customers shall be offered a price based on prevailing market rates at the time of the opt in.
 - 4.2.1.2. Former Competitive Supply Customers that are residential or small business

customers shall be offered the standard contract price

4.2.2. The Competitive Supplier shall notify the Municipality of all prices offered to opt-in customers.

4.2.3. Unless this requirement is waived by the Municipality, the end date of any opt-in contract shall be coterminous with end date of the Standard Product.

4.3. Opt-in Process

4.3.1. Customers may opt in to the aggregation by calling the Competitive Supplier's customer service number and requesting to opt in.

4.3.2. The Competitive Supplier shall fully disclose to the customer the price and all other terms and conditions of service. If the customer agrees to the price and terms and conditions, the Competitive Supplier shall submit an "enroll customer" transaction to the LDC within five (5) business days.

5. Optional Products

5.1. Prior to enrollment, Customers may elect an Optional Product by calling the Competitive Supplier's customer service number. The Competitive Supplier shall enroll such customers on the Optional Product.

5.2. Customers enrolled in the program may elect an Optional Product, or a return to the Basic Product, by calling the Competitive Supplier's customer service number. Within five (5) business days after a customer makes such an election, the Competitive Supplier shall submit a "change supplier data" transaction to the LDC to make the change in the customer's rate option. Once submitted to the LDC, the change shall become effective as provided in the Terms and Conditions for Municipal Aggregators.

6. Program Termination

6.1. In the event that the municipality elects at any time to terminate the program, the Competitive Supplier shall return all customers to the LDC's basic service via Electronic Data Interchange in accordance with the rules set forth in the Electronic Business Transactions Working Group Report.

EXHIBIT D
CUSTOMER SERVICE POLICY AND PRACTICES

The detailed terms of service are more fully described in the Agreement executed on November 4, 2015, which is posted and available on the Constellation web site at the following link: www.constellation.com/ma-westborough. Competitive supplier will provide a copy of this Agreement to any participating Consumer that requests a copy.

It is the Policy of the Competitive Supplier to:

- 1) Provide for Customer services that are reasonably accessible to all Participating Consumers during normal working hours and that allow Participating Consumers to transact business they may have with the Competitive Supplier; Such Customer service to include availability of Bilingual (Spanish) customer service representative; online customer chat line; customer emails responded to within one business day, and after hours voice messages answered by experienced customer service rep the following business day.
- 2) Provide a toll-free telephone number that will be established by Competitive Supplier and be available for Participating Consumers to contact Competitive Supplier during normal business hours (9:00 A.M. – 5:00 P.M. Eastern Standard Time or Eastern Daylight Saving Time, as applicable, Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier;
- 3) Include the offer to resolve any dispute with any Participating Consumer pursuant to the dispute resolution procedures described in 220 CMR 25.02 (4), or MGL c 164 (1) (F) (2).
- 4) All Participating Consumers will have the right to opt out of the Program at any time without penalty. Participating Consumers who opt out will have the right to return to the Program at a price that reflects market prices at the time of their return.
- 5) Competitive Supplier will assign a senior Customer Service Team representative, as described in Exhibit E to be primary contact for the municipality.

EXHIBIT E

SERVICE CONTACTS

As required by Article 7.3, the Municipality may contact the following representatives of the Competitive Supplier with requests for information or clarification at the telephone numbers and or email addresses listed below:

Jeremy Lutes
Principal, Channel Manager
9960 Corporate Campus Blvd., Suite 2000
Louisville, KY 40223
(502) 387-2095
Jeremy.lutes@constellation.com

Chris Wade
1221 Lamar Street
Houston, TX 77010
(713) 354-0482
Christopher.wade@constellation.com

These Service Contacts may be updated from time to time without the need for an amendment of this Agreement

EXHIBIT F AGGREGATION PLAN

(To be included in final contract)