

**AGREEMENT FOR PROVISION OF
ELECTRICITY GENERATION SUPPLY SERVICES FOR
RESIDENTIAL GOVERNMENT ENERGY AGGREGATION**

By and Between

*the City of Hoboken
in the County of Hudson, New Jersey*

and

Direct Energy Services, LLC

Dated **August 18, 2021**

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ELECTRICITY GENERATION SUPPLY SERVICES FOR RESIDENTIAL
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This AGREEMENT FOR PROVISION OF ELECTRICITY GENERATION SUPPLY SERVICES made this **18th** day of **August 2021** ("Agreement") is by and between the City of Hoboken ("Municipality"), in the County of Hudson, New Jersey, a public body corporate and politic of the State of New Jersey (the "Municipality") and **Direct Energy Services, LLC** (the "Supplier") (License # **ESL-0078**).

WITNESSETH:

WHEREAS, pursuant to New Jersey's Government Energy Aggregation Act of 2003 (N.J.S.A. 48:3-92 - N.J.S.A. 48:3-95) and the New Jersey Board of Public Utilities ("BPU") implementing regulations (N.J.A.C. 14:4-1 *et seq.*), as amended (collectively, the "Act"), the Municipality has determined to undertake a Residential Governmental Energy Aggregation Program (as defined herein) charged with the responsibility for adopting and providing for the implementation of such Residential Governmental Energy Aggregation Program within the geographic boundaries of the Municipality ("Program"); and

WHEREAS, pursuant to the Program, the Municipality's Council will enter into a written contract for the provision of Electricity Generation Supply Service on behalf of residential customers within its geographic boundaries which will replace such customers current default electricity basic generation service ("BGS") provided through the local electric distribution utility; and

WHEREAS, on May 2, 2018, the Municipality's Council has adopted an ordinance formalizing its intent to commence the Program on behalf of all of the residential energy customers of the Municipality that do not opt-out of the Program in accordance with the Act and pursuant to the Act; and

WHEREAS, the Municipality and its duly appointed Energy Agents (as defined herein) engaged in a procurement process to obtain a third-party supplier of energy, duly licensed by the BPU, to implement the Program; and

WHEREAS, on July 7, 2021, the Municipality issued a Request for Proposals ("RFP") for Third-Party Energy Supplier pursuant to the Act; and

WHEREAS, based upon the Supplier's response to the RFP, dated August 18, 2021, the Municipality has determined that the Supplier possesses the minimum acceptable financial, technical and administrative qualifications including, but not limited to, any and all required authorizations to operate within the Public Service Gas and Electric ("PSE&G") Local Distribution Area, necessary to provide energy supply services, and thereafter designated the Supplier as a qualified vendor; and

WHEREAS, after the Municipality's evaluation of all of the proposals submitted by qualified vendors in response to the RFP, has determined that the Supplier's proposal serves the interests of the Municipality and has resolved to recommend award of a contract for such services to the Supplier; and

WHEREAS, the Municipality and the Supplier now desire to enter into this Agreement for the supply of electricity generation supply services all in accordance with the terms and conditions of the Act, the RFP and this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties intending to be legally bound agree as follows:

SECTION I - GENERAL

1.01 Definitions

As used in this Agreement, the terms set forth below in this Section shall have the meanings indicated:

"The Act" shall mean the New Jersey Government Energy Aggregation Act of 2003 (N.J.S.A. 48:3-92 - N.J.S.A. 48:3-95) and the New Jersey Board of Public Utilities ("BPU") implementing regulations (N.J.A.C. 14:4-6 *et seq.*).

"Agreement" shall mean this Agreement for Provision of Electricity Generation Supply Services by and between the Municipality and the Supplier and any amendments and supplements hereto made in accordance with the terms hereof.

"Applicable Laws" shall mean any and all federal, state or local statutes, laws, ordinances, rules, regulations, court decisions, directives, orders or similar mandates of any Government Agency that relate to, govern, control or pertain to the performance of any of the rights and obligations of either Party under this Agreement including, but not limited to: (i) the Act; (ii) the Board of Public Utility's rules in N.J.A.C. 14.4 as they relate to a TPS; (iii) the Consumer Protection Standards in N.J.S.A. 48:3-85 and N.J.A.C. 14:7; (iv) the environmental disclosure requirements in N.J.S.A. 48:3-87; and (v) regulations regarding renewable energy and energy efficiency in N.J.A.C. 14:8-1 *et seq.*

"Basic Generation Service" or "BGS-RSCP" shall mean, pursuant to N.J.A.C. 14:4-1.2, Electric Generation Service that is provided to any customer that has not chosen an electric power supplier, as defined herein, whether or not the customer has received offers for competitive supply options; including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the BPU.

"BPU" shall mean the New Jersey Board of Public Utilities.

"Contract Price" shall be for 100% full requirements electricity supply and shall include a price per kilowatt-hour for load-following electric energy supply, capacity and capacity performance, transmission to include network integration transmission (NITS) and transmission enhancement charges (TEC), ancillary services, balancing operating reserves, PJM charges and fees, Fees required to comply with state mandated Renewable Portfolio Standards (RPS), Distribution/Transmission losses, supplier margin, energy agent fees, Sales and Use Tax (not New

Jersey State sales tax) and any other applicable costs to transmit Electricity to the Delivery Point, and is in compliance with RPS standards as set pursuant to an online energy auction operated by the Energy Agents on August 18, 2021. The Participant will be responsible for 6.625% New Jersey Sales and Use Tax which shall be included in the supply price. Said taxes will be adjusted at a rate consistent with state law should the rate rise or fall during the term of this Agreement.

"Contract Commencement Date" shall have the meaning set forth in Section 2.01 hereof.

"Contract Term" has the meaning set forth in Section 2.01 of this Agreement.

"Customer Information" shall mean information specific to a particular residential customer, which a Party has acquired or developed in the course of providing services under this Agreement. This term includes, but is not limited to, a residential customer's name, address, telephone number, usage habits or history, peak demand and payment history.

"Delivery Point" shall mean each point on the PJM transmission grid identified by the Electric Distribution Company where Electricity is delivered by the Supplier.

"Electric Distribution Company" or "EDC", pursuant to N.J.A.C. 14:4-1.2, means an electric public utility as defined herein. An EDC cannot be an electric power supplier, but may provide basic generation service.

"Electric Generation Service" shall mean, pursuant to N.J.A.C. 14:4-1.2, the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

"Electric Public Utility", pursuant to N.J.A.C. 14:4-1.2, means a public utility, as that term is defined in N.J.S.A. 48:2-13, that transmits and distributes electricity to end users in New Jersey.

"Energy Agent" shall mean, pursuant to N.J.A.C. 14:4-1.2, a person that is registered with the Board pursuant to N.J.A.C. 14:4-5, and is thereby authorized to arrange the retail sale of electricity, electric related services, gas supply or gas related services between government or private aggregators and electric or gas power suppliers, but does not take title to the electricity or gas sold. For purposes of this Agreement, the Energy Agents shall be Commercial Utility Consultants ("CUC") and its subcontractor Concord Energy Services ("CES").

"FERC" means Federal Energy Regulatory Commission or any successor agency.

"Flat Price (FP)" shall mean the rate provided by the Supplier to be a flat, non-variable rate per kWh which includes all pricing components that is locked in for the term of the contract.

"Government Agency" shall mean, as appropriate, any one or several of, any court of competent jurisdiction, the United States of America, the State of New Jersey or any municipality or other political subdivision thereof which exerts competent jurisdiction over the Municipality or the Supplier, or any local, state or federal agency, regulatory body or subdivision of any of the

above as may have jurisdiction over or power and authority to regulate the Municipality or the Supplier.

"kWh" shall mean kilowatt-hours, or 1,000 watt-hours of electric energy consumption as measured by the LDC meter.

"Local Distribution Company" or *"LDC"* shall mean an electric public utility, as defined in the Act and noted herein. For purposes of the Program, Jersey Central Power & Light Company shall serve as the LDC(s). Pursuant to the Act, an LDC cannot be an electric power supplier, but may provide basic generation service.

"Municipality" shall mean the City of Hoboken, County of Hudson, New Jersey, a public body corporate and politic of the State of New Jersey, and its permitted successors and assigns.

"NITS" shall mean Network Integration Transmission Service provided by PJM to transport electric energy from the point of generation to the Delivery Point.

"NITS Charges" shall mean the tariffs for NITS approved by the FERC and implemented and assessed by PJM on load in the applicable EDC transmission zone, including any applicable surcharges such as Reliability Must Run charge and transmission enhancements, and net of any applicable credits.

"Participants" shall mean, collectively, the BGS-RSCP residential service (RS) accounts who are participating in the Program as such term is used in the Act.

"Party" or "Parties" shall mean the Municipality and/or the Supplier, as applicable.

"PJM" shall mean the PJM Interconnection, LLC, the regional transmission organization that coordinates the movement of wholesale electricity in a specified region.

"Program" shall mean a government energy aggregation program authorized and carried out in accordance with the Act.

"Residential Accounts" has the meaning set forth in Section 3.01(A) of this Agreement;

"Supplier" means Supplier, a NJBPU Licensed Energy Generation Supplier, and its permitted successors and assigns.

"Third Party Supplier" or "TPS", otherwise referred to in the Act as an "electric power supplier", means, pursuant to N.J.A.C. 14:4-1.2, a person that is licensed by the BPU to offer, and to assume the contractual and legal responsibility to provide, Electric Generation Service for use by retail customers. This term includes, but is not limited to, load serving entities, marketers and brokers that offer or provide Electric Generation Service for use by retail customers. An electric power supplier generates electricity or buys electric generation and sells it to others for use by retail customers. An electric public utility that provides Electric Generation Service only for the purpose of providing basic generation service is not an electric power supplier or Third-Party Supplier.

1.02 Binding Obligations

The Parties agree that upon execution of this Agreement, it shall be in full force and effect and shall be binding upon the Parties notwithstanding any required approval of this Agreement by Government Agencies.

SECTION II - TERM OF THE AGREEMENT

2.01 Commencement, Duration of Term and Rate

The term of this Agreement ("Contract Term") shall commence on March 1, 2022 (the "Contract Commencement Date"), and shall continue from that date until twenty-one (21) months, or until such time that the term of this Agreement is extended or terminated earlier in accordance with the provisions of this Agreement ("Contract Termination Date"). Provision of Electric Generation Services, as defined in N.J.A.C. 14:4-1.2, shall be provided for the period commencing on the first meter read following the Contract Commencement Date and ending on the meter read date immediately following the Contract Termination Date.

The contract rate for the term is:

\$0.12840/kWh per Bid Group 2 for eligible Public Service Gas and Electric (PSE&G) BGS-RSCP residential service (RS) customers only. This price includes an enhanced renewable energy product that is 10% above the prevailing New Jersey Renewable Portfolio Standards.

The contract rate includes the following alternate options:

- ☒ Residents will have the ability to opt-in to the flat pricing alternate option for **Bid Group 2A at \$0.12650/kWh** which does not include additional renewable energy sources other than the prevailing New Jersey Renewable Portfolio Standards (RPS) in any given RPS compliance year (otherwise referred to as Energy Year or 'EY'¹). This alternate option for residents is voluntary and residents must Opt-In to this alternate option based on their personal preference to not increase the percentage of renewable energy sources.
- ☒ 100% Enhanced Renewable Energy Option for **Bid Group 2B**– Residents will have the ability to opt-in to an enhanced renewable energy option at **\$0.14540/kWh** in addition to Bid Group 2 Flat Price option. This alternate option for residents is voluntary and residents must Opt-In to this alternate option based on their personal preference to increase the percentage of renewable energy sources.

¹ Under the NJ RPS, each compliance year or EY runs from June 1st through the following May 31st.

Additionally, any administrative reimbursements to the Municipality for program costs, shall be disregarded for purposes of comparing the Flat Contract Price and the LDC BGS-RSCP tariff price.

Supplier agrees to provide notice to all Program Participants at least sixty (60) days prior to the end of the Electric Generation Service in accordance with the original Contract Termination Date and, when applicable, any consecutive government energy aggregation program Contract Termination Dates, informing Participants of the date upon which the Electric Generation Service term ends. Pursuant to N.J.A.C. 14:4-6.10(a)12, Supplier shall transfer all residential accounts to the BGS service provided through the respective LDC by the first meter read after the applicable Contract Termination Date, and Supplier will provide the Municipality with a final Participant list, in Microsoft Excel format. Customers will at all times remain served through PSE&G, their LDC, whether their electricity is supplied by the selected TPS or BGS.

The Parties may renew this Agreement, as follows:

- A. The Municipality adopts a resolution to renew this Agreement, and the resolution includes a finding by the Municipality that the services are being performed in an effective and efficient manner, and that the extension and/or renewal agreement will provide the Program Participants with savings relative to applicable BGS-RSCP;
- B. Any price change included as part of the extension and/or renewal term will be negotiated to provide the Program Participants with savings relative to applicable BGS-RSCP;
- C. Prior to the commencement of any Program extension and/or renewal, in accordance with N.J.A.C. 14:4-6.11(a), Program Participants shall be promptly notified in writing of the extension and/or renewal terms including effective dates and any changes in pricing; further, Program Participants will be given thirty (30) days in which to opt-out of the extension and/or renewal Program;
- D. The terms and conditions of the Agreement remain substantially the same;
- E. In accordance with N.J.S.A. 40A:11-15, the Agreement is not extended so that it runs for more than a total of five (5) consecutive years.

SECTION III – SERVICES TO BE PROVIDED BY THE SUPPLIER

3.01 Electric Generation Supply Services to Be Provided by Supplier

The Supplier shall be responsible for scheduling all Electric Generation Supply Services, as defined herein and in N.J.A.C. 14:4-1.2, required by the Participants including any necessary distribution or transmission authorizations. Suppliers' obligations shall include, but not be limited to, additional services and PJM administration fees and related services. Such Electric Generation Services must be uninterrupted and available to Participants at all times during the Contract Term.

All responsibilities of the Supplier herein stated shall be subject to the requirements, rules and tariffs implemented by the LDC and PJM. Supplier acknowledges that it will not supply an insufficient amount of Electric Generation Service other than for an Uncontrollable Circumstance as defined herein.

Supplier agrees that in no event shall it cease to deliver a sufficient level of Electric Generation Service, subject to the terms and conditions herein and the LDC tariffs, to the LDC on behalf of the Participants upon less than thirty (30) days' notice to the Participants, except pursuant to a directive from the BPU staff pursuant to N.J.A.C. 14:4-5. In the event that Supplier is unable to supply the required Electric Generation Services, it shall be subject to damages equal to the difference between the price of Electric Generation Service provided by Supplier as calculated in Section 5.01(A) and the price paid by the each Participant for Electric Generation Services from an alternative source, not to be limited to but also include the currently applicable LDC BGS-RSCP tariff price and damages for associated costs, if any, incurred by each customer in having to switch to an alternative source. Such difference shall be multiplied by the energy usage of the Participants measured in kWh for the remainder of the Contract Term.

A. Residential Customers to Be Included in the Program

Residential customers that: (i) are located within the geographic boundaries of the Municipality; (ii) are not being served by a Third-Party Supplier; and (iii) have not elected to opt-out of the Program via mail, telephone call or internet response, pursuant to N.J.A.C. 14:4-6.6(t), shall be deemed to be included in the Program ("Residential Accounts").

The names of all BGS-RSCP residential service (RS) accounts shall be submitted to the LDC for approval to participate in the Program. Supplier agrees to provide a notice to all accepted Residential Accounts notifying them that Supplier has been selected to provide electric generation supply services and that the Residential Account will have a minimum of thirty (30) calendar days from the date of such notice to contact the Supplier or Energy Agents to opt-out pursuant to N.J.A.C. 14:4-6.6(q)-(u). The notice shall additionally state that a customer may opt-out of the program at any time, with no penalty pursuant to N.J.A.C 14:4-6.3(k).

B. Residential Customers Ability to Opt-Out of the Program After Commencement

Each Residential Account shall be permitted to opt-out of the Program by providing thirty (30) days prior notice to the Supplier without penalty. Upon receipt of such notice, the Supplier will return the Residential Account to the LDC BGS-RSCP effective as of the first meter read date that is at least thirty (30) days from the date of receipt of notice.

Furthermore, a Residential Account shall be permitted to withdraw at any time without penalty. Upon receipt of such notice, the Supplier will return the Residential Account to the LDC BGS-RSCP effective as of the first meter read date that is at least thirty (30) days from the date of receipt of notice.

C. No Guarantee as to Number of Participants

The Municipality makes no guaranties as to the number of Participants that will take part in the Program at any point during the Contract Term.

D. Undeliverable Mail

Supplier and Energy Agents agree to opt-out of the program any residential customers for whom they receive returned mail.

3.02 Compliance with Applicable Laws

The Supplier shall perform all electric generation supply services in full compliance with all Applicable Laws including, but not limited to, the Act, as well as the LDC's customer account services master agreement. The Supplier shall obtain and maintain all required permits, licenses and approvals that are required to serve as a third-party electricity supplier for the entire Contract Term.

The Supplier shall provide the Municipality: (1) immediately upon receipt thereof, a true correct and complete copy of any written notice received by the Supplier of non-compliance with applicable laws including, but not limited to, the Act with respect to the supply of Electric Generation Supply Services, and true and accurate transcripts of any oral notice of non-compliance with applicable laws, issued or given by any Government Agency; and (2) immediate written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such non-compliance, or of any legal proceeding alleging such non-compliance. In the event that the Supplier fails at any time to comply with Applicable Laws, then the Supplier shall remedy such failure at its cost and expense, and the Supplier shall bear all loss and expenses of the Municipality (to the extent reasonably verified and documented) resulting therefrom, and pay any resulting damages, fines, assessments, levies, impositions, penalties or other charges resulting therefrom.

3.03 Compliance with Operating Requirements Pursuant to N.J.A.C. 14:4-6.10

- A. The Supplier shall assist the Municipality and its Energy Agents in connection with dissemination of all information to potential Participants regarding the operation and bid price associated with the Program and to enroll any residential customer who does not opt-out of the Program, all in accordance with N.J.A.C. 14:4-6.6.
- B. The Supplier may reasonably request to utilize the Energy Agents' resources, equipment, systems or employees in connection with the Program with prior written notice to the Energy Agents which request may be approved or denied by the Energy Agents in its sole and absolute discretion.
- C. Upon written request, the Supplier shall provide certain communications to Participants in a language other than English.

- D. Supplier shall comply in all respects with its obligations under the BPU consumer protection rules in N.J.A.C. 14:4-7.
- E. It is the sole responsibility of the Supplier to schedule electricity generation supply delivery and transmission to meet the requirements of the Participants in accordance with the regulations and tariffs of the PJM and the LDC. This obligation of the Supplier may not be waived, curtailed or in any way diminished except by reason of Uncontrollable Circumstance (as hereinafter described) or due to a failure of the PJM or LDC that was beyond the control of Supplier.
- F. Supplier hereby assumes all risk and responsibility for all direct actual damages sustained by the Participants due to Suppliers inability to supply sufficient Electric Generation Supply Services to satisfy the full needs of the Participants as required pursuant to this Agreement (except as provided in in Subsection "E." above).
- G. Supplier shall be solely responsible for any penalties that may be imposed by an LDC as a result of over-delivery of electricity or under-delivery of electricity, or non-performance by the Supplier.

3.04 Record Keeping Requirements

The Supplier and the Municipality shall maintain timely, accurate and comprehensive records related to the Program. The Supplier and the Municipality shall provide such records to the other Party to include, among other things, the records of Participants and residential customers who are eligible to become Participants.

The Supplier shall also be required to collect, process, maintain, and provide any records, data, or paperwork that the Municipality deems necessary and permit the Municipality and/or Municipality's employees and professional advisors including, but not limited the Energy Agents, to review information related to Program enrollment and billing.

3.05 Supplier Confidentiality

Pursuant to N.J.A.C. 14:4-6.3(f), all parties including the Supplier and its subcontractors or other designees shall keep all Customer Information obtained as a result of its carrying out its obligations under this Agreement confidential and exempt from public disclosure as well as Open Public Records Act ("OPRA") requests, as required by the Applicable Laws request, unless otherwise required by court order, and to limit any use or dissemination of Customer Information to facilitate the Program. All such Customer Information shall be deemed confidential whether or not marked as such.

Further, pursuant to N.J.A.C. 48:3-85 - Consumer Protection Standards, the Supplier and its subcontractors or other designees agree to comply with the following:

N.J.S.A. 48:3-85 b. (1) Except as provided in paragraph (2) of this subsection , an electric power supplier, a gas supplier, an electric public utility, and a gas public utility shall not disclose, sell, or transfer individual proprietary information, including, but not

limited to, a customer's name, address, telephone number, energy usage, and electric power payment history, to a third party without the consent of the customer.

(2) (a) An electric public utility or a gas public utility may disclose and provide, in an electronic format, which may include a CD rom, diskette, and other format as determined by the board, without the consent of a residential customer, a residential customer's name, rate class, and account number, to a government aggregator that is a municipality or a county, or to an energy agent acting as a consultant to a government aggregator that is a municipality or a county, if the customer information is to be used to establish a government energy aggregation program pursuant to sections 42, 43, and 45 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and 48:3-94). The number of residential customers and their rate class, and the load profile of non-residential customers who have affirmatively chosen to be included in a government energy aggregation program pursuant to paragraph (3) of subsection a. of section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant to this paragraph prior to the request by the government aggregator for bids pursuant to paragraph (1) of subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94), and the name, address, and account number of a residential customer and the name, address, and account number of non-residential customers who have affirmatively chosen to be included in a government energy aggregation program pursuant to paragraph (3) of subsection a. of section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant to this paragraph upon the awarding of a contract to a licensed power supplier or licensed gas supplier pursuant to paragraph (2) of subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94). Any customer information disclosed pursuant to this paragraph shall not be considered a government record for the purposes of, and shall be exempt from the provisions of P.L.2001, c.404 (C.47:1A-5 et al.).

Supplier and its subcontractors or other designees hereby agree that they shall not release any information to any media outlets regarding its appointment as a Third-Party Supplier for the Program without prior consultation and written approval from the Municipality. Such requirement shall exist only in reference to the initial disclosure of Supplier appointment to the media outlets.

Pursuant to N.J.A.C. 14:4-6.10(a)14, Supplier and its subcontractors further agree that all customer information provided to the TPS for the government energy aggregation program shall be deemed confidential and shall not be used or disseminated by the TPS for any purpose other than the facilitation of the government energy aggregation program.

SECTION IV - OTHER OBLIGATIONS OF THE SUPPLIER

4.01 Participant Bills

- A. Supplier shall not issue separate bills for its services in accordance with the Program. Participant billing shall be performed by the LDC utilizing a utility consolidated billing format. The Supplier shall provide to the LDC all of the information required pursuant to the LDC's tariffs and any additional information required by the Act for inclusion in the LDC's consolidated bills including, but not limited to, the following:

1. For all customers the unit price for each kWh; and
 2. Any other information the BPU requires by order.
- B. The Supplier shall provide budget billing to residential participants in the Program, and Supplier agrees that rather than invoicing and collecting monthly charges from a customer equal to monthly metered usage multiplied by the contract price, the supplier will invoice and collect an equal amount each month. For customers who are on the LDC's budget billing or equal payment plan, Supplier shall provide the LDC with the initial budget plan amount for the LDC to bill. The Supplier will maintain the budget balance for the customer and true it up as of the end of the contract term to ensure that the customer pays for actual electric generation service provided by the supplier. Additionally, the Supplier shall allow for customers to elect the budget billing option at any time and under the same terms and conditions available through the current LDC.

Supplier shall, from time to time review each customer's budget billing account and adjust the budgeted amount so the customer will not have a large reconciliation balance at the end of the term. In addition, in keeping with N.J.A.C. 14:4-6.10(a)14., Supplier shall true-up all accounts subject to budget billing at least every 12-month period during the term of the government energy aggregation program. Further, at end of the term, the customer shall be provided a final billing which provides a detail of the actual usage versus the budgeted amount. This detail shall be provided either before or not later than the time the charges appear on the LDC's bill. The billing detail shall either be included with the LDC bill or separately mailed to the customer at the Suppliers expense.

- C. In the event that the LDC rejects a Residential Account from utility consolidated billing for failure to timely pay any bills assessed, in accordance with the LDC's tariffs, Supplier may cease to provide Electric Generation Service to such Residential Account.
- D. Supplier will adjust Participant's accounts following confirmation of the actual volumes delivered and will adjust the Participant's account for amounts resulting from any discrepancy or adjustment to, or recalculation of, taxes. No retroactive adjustments will be made beyond a period of twelve (12) months from the date of a billing discrepancy; provided however, that as long as notice of any discrepancy is given by either party to the other party during such twelve (12) month period, the parties acknowledge that the actual resolution of such discrepancy and the determination of any amounts owed may occur after the end of such twelve (12) month period.

4.02 Representations by the Supplier

The Supplier hereby represents to the Municipality as follows:

- A. The Supplier is Direct Energy Services, LLC, a duly formed Limited Liability Corp, and validly existing and in good standing in the jurisdiction of its organization and is duly qualified to transact business in each and every jurisdiction where such qualification is required to enable the Supplier to perform its obligations under the

terms of this Agreement. The Supplier is fully licensed by the BPU in accordance with the Act (License #ESL-0078).

- B. No act of bankruptcy has been commenced by or against the Supplier.
- C. The execution of this Agreement, and the performance of all obligations under this Agreement have been authorized by all required actions of the Supplier, all as required by the organizational documents and Applicable Laws that regulate the conduct of the Supplier's affairs.
- D. The execution of this Agreement and the performance of all obligations set forth herein do not conflict with and do not constitute a breach of or event of default under any of the organizational documents of the Supplier or any agreement, indenture, mortgage, contract, instrument to which the Supplier is a party or by which the Supplier is bound.
- E. This Agreement, as of the date the document is signed by both parties, constitutes the valid, legally binding obligation of the Supplier, enforceable against the Supplier in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.
- F. The Supplier is not currently in breach of or in default under permits or any other Applicable Laws that would materially adversely affect the Supplier's ability to perform hereunder.
- G. There is no action, suit or proceeding, at law or in equity, before or by any court or similar Government Agency pending or, to the best knowledge of the Supplier, threatened in writing against the Supplier wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Supplier of its obligations hereunder or the other transactions contemplated hereby, or that, in any way would materially adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Supplier in connection with the transactions contemplated hereby.
- H. The Supplier acknowledges that it must utilize the current Electronic Data Interchange ("EDI") protocols to flag the customers that it enrolls as part of this Program as GEA customers.

The representations and warranties set forth in this Section 4.02 shall survive the early termination or expiration of this Agreement.

4.03 Supplier's Obligation to Assist the Municipality with Preparation and Delivery of Notices to Participants and Collection of Participant Responses

Supplier shall assist the Municipality and its Energy Agents with the preparation of a written notice to all residential electric customers within the jurisdiction of the Municipality

(except residential customers already being served by a third party electricity supplier) informing them of the details of the Program and their ability to opt-out of the Program, in accordance with N.J.A.C. 14:4-6.6(r). Further, pursuant to N.J.A.C. 14:4-6.6(r)9, Supplier shall also prepare and include with Opt-Out Notice a one-page GEA Program Summary that reflects the specifics of the GEA Program in the standardized format that is posted on the Board's website (<http://www.nj.gov/bpu>), in English and Spanish and/or other language(s) requested by the Aggregator. The Supplier shall include language in its TPS contract summary that Supplier will comply with all Applicable Laws as defined in this Agreement. A Supplier's Terms and Conditions shall be provided to residents upon their request and shall be available electronically via website. Suppliers' Terms and Conditions shall reflect only the Terms and Conditions related to this Government Energy Aggregation Agreement.

The written notice will provide processes for residents wishing to opt-out of the GEA program. At a minimum, processes shall include a return mailer – either a tear-off form and return postage paid envelope or separate postage paid postcard – that residents can complete and mail back to the Supplier or Energy Agents. A bar code shall be utilized and imbedded with customer account number and placed on the return mailer. Supplier will also provide a toll-free telephone number dedicated to GEA programs that residents wishing to opt-out of the program can call. The Energy Agents will also provide their telephone number(s) for residents to call should they have questions about the program or wish to opt-out or opt-in to the program. The Energy Agents will provide residents access to a web portal where they can opt-in and opt-out of the program during the contract period; the portal immediately notifies both the Energy Agents and the Supplier via email of the opt-out or opt-in request.

Mailings must comply with all other terms and conditions as set forth in the RFP under “SCOPE, General Overview, Project Implementation”.

Supplier shall prepare and maintain a list of all residential customers within the geographic boundaries of the Municipality who elect to opt-out of the Program, along with a list of residential customers who would like to be excluded from future government energy aggregation programs. Such opt-out lists shall be provided to the Municipality, in Microsoft Excel format, upon request and at a minimum upon the Contract Termination Date.

Supplier, with the assistance of the Municipality and the Energy Agents, shall obtain from the LDC(s) a list of all residential customers within the geographic boundaries of the Municipality who are eligible to participate in the Program and are not currently served by a third party supplier of electricity, which list shall be provided to the Municipality and/or Energy Agents upon request. Further, in order to capture any new eligible residential customers within the geographic boundaries of the Municipality who are not already enrolled in the Program or under contract with a Third-Party Supplier, such list shall be updated during the Program term by the LDC upon request of the Supplier, Aggregator, or Energy Agents.

Supplier shall assist the Municipality in enrolling residential customers that wish to opt-in to the program: (a) that move into the geographic boundaries of the Municipality after commencement of the Program; and/or (b) were not originally eligible for the Program because of an existing contract with alternative Third-Party Suppliers but have since ended such contract.

Upon the Contract Termination Date, Supplier will provide the Municipality with a Microsoft Excel file of current Program Participants and their respective Customer Information. In addition, Supplier and/or Energy Agents shall provide the Municipality with a Microsoft Excel file of residents who, during the term of the contract, expressed their desire to permanently opt-out of any government energy aggregation programs offered by the Municipality.

4.04 Supplier's Obligation to Provide Indemnity

Supplier agrees to protect, indemnify, defend and hold harmless the Municipality and its officials, employees, and agents (each an "Indemnified Party") from and against all liabilities, penalties, fines, forfeitures, damages, claims, demands, causes of action, judgments, costs, expenses, suits, and attorney's fees, and will defend the aforesaid in any suit, appeal or other proceeding, including those for personal injury to, or death of, any person, or loss or damage to property, contamination of or adverse effect on the environment, or any violation or alleged violation of Applicable Laws arising out of Supplier's (its employees, Subcontractors, agents or others acting on behalf of Supplier) wrongful acts or omissions in the performance of this Agreement; provided, however, that such indemnification shall not apply to the extent of any damages, liabilities or expenses resulting from or arising out of the gross negligence or willful misconduct of the Indemnified Party. Furthermore, Supplier agrees to indemnify the Municipality and the participants for any penalties assessed by the LDC due to Suppliers over-supply or under-supply of electricity.

The provisions of this Section 4.04 shall survive termination of this Agreement for a period of two (2) years.

4.05 Emergency Contact Information

Supplier shall provide a customer service representative via a toll-free telephone number to assist the Participants in the event of any issues related to its supply of Electric Generation Services. In the event of any such issues, Participants should contact:

Emergency Notifications

Supplier Toll Free Telephone Number: (866) 968-8065

LDC Emergency Telephone Number: (800) 662-3115

BPU Division of Consumer Relations Telephone Number: (609) 777-3300

4.06 Reporting Requirements

A. Municipality Requests for Information

The Supplier, at its sole cost and expense, upon the reasonable written request of the Municipality shall use its best efforts to supply all non-confidential information available to it regarding the Program and its operation as it relates to this Agreement, which information shall include but not be limited to lists of residential customers who are residing in the geographic boundaries of the Municipality who are not currently being supplied Electric Generation Supply Services from a Third-Party Supplier.

B. Notice of Adverse Events

The Supplier shall provide the Municipality with a copy of the following materials within ten (10) business days after the Supplier receives verbal or written notice of the listed adverse event:

- 1) Any notice of violation issued by any Government Agency responsible for regulation of Electric Generation Supply Services which indicates that the Program is not in compliance with Applicable Laws.
- 2) Any notice of the denial, modification, revocation, suspension, cancellation, or non-renewal of any required license required for the performance of Electric Generation Services under this Agreement including, but not limited to licensure by the BPU.

Upon receipt of any such notice, the Supplier shall also provide certification to the Municipality attesting that, to the best of Supplier's knowledge, there are no circumstances that will materially impair the Supplier's ability to perform its obligations under the terms of this Agreement during the remainder of the Contract Term as a result of such notice of violation.

SECTION V - PAYMENT OBLIGATIONS

5.01 Payment Obligation

A. Payments to Supplier

The Contract Price charge by the Supplier for Electric Generation Supply Service to Residential Account that have not opted-out that have affirmatively opted-in to the Program as of the Contract Commencement Date shall be Contract Price as proposed by Supplier pursuant to the online energy auction dated August 18, 2021, and thereafter accepted and approved by the Municipality on August 18, 2021 by official government action.

Any changes to such Contract Price, as described above, permitted pursuant to this Agreement and/or the Act or any Applicable Laws during the Contract Term may only be made final and effective upon affirmative authorization of the Municipality, unless such change is required by operation of law, pursuant to N.J.A.C. 14:4-7.6(l).

The Supplier hereby assumes all risk associated with the non-payment of all charges to the Program Participants, except, and to the extent that such charges are to the Municipality itself.

B. Payments to Energy Agent

As full payment for all services provided by the Energy Agents solely with regard to the establishment of an online auction for the selection of a third-party energy supplier, the Supplier shall pay to the Energy Agents in accordance with the terms in the agreement between Supplier and the Energy Agents.

The Municipality has retained Commercial Utility Consultants, Inc. ("CUC") and its subcontractor Concord Energy Services ("CES") to assist in procuring Electricity Supply Service for the Program Participants. The Supplier must enter into a separate agreement with CUC and CES, unless a broker agreement already exists between the Supplier and Energy Agents, whereby the Supplier will pay CUC and CES a fee of \$0.0015/kWh of electricity usage by the Program Participants during the term of the agreement. Payments will be made on a monthly basis to Energy Agents from Supplier, automatically, once supplier calculates aggregated usage from Program Participants. All Bid Prices must be inclusive of the Energy Agent Fees payable to CUC and CES.

C. Reimbursements to Municipality

Pursuant to N.J.A.C 14:4-6.8(d), Administrative Fees for the Municipality to be reimbursed for out-of-pocket costs actually incurred, in establishing or operating the energy aggregation program, as reflected in invoices or vouchers authorized and paid by the Municipality. The fees may be for attorney review, outreach costs including, but not limited to, printing of and postage for materials specific to the energy aggregation program. The Municipality may NOT allocate employee costs to the program or require Supplier to pay costs associated with these employees such as salaries, benefits, etc.; this is not permitted. The administrative fees, not to exceed \$2,000.00, shall be reimbursed within thirty (30) days after actual invoices and/or vouchers are provided to Supplier for reimbursement.

SECTION VI - OTHER OBLIGATIONS OF THE MUNICIPALITY

6.01 Compliance with Applicable Laws

A. The Municipality shall perform all of its obligations under this Agreement in conformance with Applicable Laws including, but not limited to, the Act and in the event that the Municipality becomes a member of a larger energy aggregation program, it shall comply with the notice requirements in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, at N.J.A.C. 5:34-7.18 and 7.19.

B. In furtherance of the Program, the Municipality, or the Energy Agents shall:

1. Provide written notice to all affected LDCs of the identity of the Supplier, in accordance with N.J.A.C. 14:4-6.6(o).

2. Provide the Supplier with the name, address and account number of each residential customer in the jurisdiction of the Municipality who are eligible to become Participants.
3. With the assistance of the Supplier, provide written notice to all residential customers within the jurisdiction of the Municipality (except those residential customers that already obtain Electric Generation Service from a Third-Party Supplier) regarding the details of the Program in accordance with N.J.A.C. 14:4-6.6(r);
4. Provide a toll-free telephone number and letter to Municipality residents stating a contact name and email address that residential customers may use to opt-out or opt-in to the Program, as applicable; and
5. Maintain a list of residential customers who, in addition to opting-out of the Program, contact the Municipality, the Energy Agents or the Supplier and formally oppose the Program and provide such residential customers the option of not being notified in future distributions of opt-out notices.

6.02 Municipality Confidentiality

Pursuant to N.J.A.C. 14:4-6.3(f), the Municipality shall keep all Customer Information and confidential information provided by Supplier obtained as a result of its carrying out its obligations under this Agreement confidential and exempt from public disclosure, as well as Open Public Records Act ("OPRA") requests as required by the Applicable Laws, unless otherwise required by court order and to limit any use or dissemination of Customer Information to facilitate the Program. All such Customer information shall be deemed confidential whether or not marked as such.

6.03 Representations of the Municipality

The Municipality hereby represents to the Supplier as follows:

- A. The Municipality is a body public and corporate and a public instrumentality of the State of New Jersey, duly organized and validly existing under the Constitution and laws of the State of New Jersey, with full legal right, power and authority to enter into and perform its obligations under this Agreement.
- B. The execution of this Agreement, and the performance of all obligations under this Agreement have been authorized by all required actions of the Municipality, all as required by the organizational documents and Applicable Laws that regulate the conduct of the Municipality's affairs.
- C. The execution of this Agreement and the performance by the Municipality of all obligations set forth herein do not conflict with and do not constitute a breach of or an event of default under any of the organizational documents of the Municipality or any agreement, indenture, mortgage, contract, instrument to which the Municipality is a party or by which the Municipality is bound.

- D. As of the Contract Commencement Date, this Agreement constitutes the legal, valid and binding obligation of the Municipality, enforceable against the Municipality in accordance with its terms, except to the extent that enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws or equitable principles affecting creditors' rights generally and except to the extent that enforceability may be limited by considerations of public policy.
- E. Other than any litigation heretofore mentioned in this Agreement, there is no action, suit or proceeding, at law or in equity, before or by any court or similar Government Agency pending against the Municipality wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Municipality of its obligations hereunder or the other transactions contemplated hereby, or that, in any way would materially adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Municipality in connection with the transactions contemplated hereby.

The representations and warranties set forth in this Section 6.02 shall survive the early termination or expiration of this Agreement.

SECTION VII – DEFAULT, TERMINATION AND REMEDIES

7.01 Events of Default

The occurrence of one or more of the following events shall constitute an "Event of Default":

- A. Either Party fails to make any payment required by the terms hereof when the same shall become due and payable, and such failure continues for at least thirty (30) days after written notice thereof.
- B. Any representation or warranty of either Party in this Agreement proves to be materially false or misleading at the time made.
- C. Either Party is adjudicated bankrupt or declared insolvent by the decree of a court of competent jurisdiction, or makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally when or as they become due, or a trustee, custodian, receiver, or liquidator is appointed for all or any material part of the such Party's facilities or either Party files or has filed against it a petition to be adjudicated a bankrupt or insolvent or seeking reorganization, arrangement, adjustment, or composition of or in respect of such Party under the Bankruptcy Code, or other similar laws, Federal or State, and if such petition is filed by a person other than such Party, and such petition is not vacated, dismissed or stayed on appeal within sixty (60) days.
- D. Either Party fails to perform any of its covenants, agreements or obligations hereunder in any material respect.

7.02 Notice Upon an Event of Default; Cure Period

If an Event of Default, as defined in Section 7.01 hereof, shall occur, the non-defaulting Party shall provide written notice of such same to the defaulting Party as soon as practicable upon becoming aware of such occurrence. Upon receipt of such written notice, the alleged defaulting Party shall have fifteen (15) days to upon which to cure such alleged Event of Default; provided, however, that if such performance requires work to be done, actions to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such fifteen (15) day period, no Event of Default shall be deemed to have occurred or to exist if such non-performing Party shall commence performance to cure the alleged Event of Default within such fifteen (15) day period and shall diligently and continuously pursue the same to completion.

Notwithstanding the foregoing, any Uncontrollable Circumstance (as hereinafter defined) shall not be deemed or construed as an Event of Default under this Agreement.

7.03 Remedies Upon Default

If an Event of Default occurs as set forth in Section 7.01 and is not cured as set forth in Section 7.02, the Party who has not committed the default may pursue, at its option, any or all of the following remedies as permitted by Applicable Laws: (i) an action for direct actual damages; (ii) an action for specific performance along with all other applicable equitable remedies; (iii) termination of this Agreement pursuant to Section 7.04 below; (iv) enforcement of any applicable performance bond; and (v) any other remedies as permitted under Applicable Laws or equity.

7.04 Right to Terminate this Agreement

Either Party shall have the right to terminate this Agreement as a result of an uncured Event of Default pursuant to Section 7.01 herein. A Party may exercise the right of termination provided in this Section 7.04 at any time by giving the non-terminating Party written notice of its election to terminate this Agreement. The notice of termination shall specify a termination date which must be not less than thirty (30) days after delivery to the other Party of the notice of termination.

7.05 Termination of Agreement for Failure to Supply Sufficient Electric Generation Supply Services

If Supplier is unable to provide a sufficient quantity of uninterrupted Electric Generation Supply Services to satisfy the full requirements of the Participants as described in Section 3.01 above, Supplier shall return the Participants to LDC BGS as soon as practicable.

7.06 Right to Amend Contract Terms Pursuant Material Change in Program Requirements; Additional Rights to Terminate

Notwithstanding anything in this Agreement to the contrary, either Party to this Agreement has the right to terminate this Agreement in the event that, subsequent to the Contract Commencement Date, any federal, state or local statute, regulation, executive order, directive or similar mandate is adopted, or any federal or state judicial decision is issued which materially and adversely changes any of the following:

- A. The legislative and/or regulatory rules or provisions that control Governmental Energy Aggregation Programs or retail choice consumer protection laws.
- B. The validity, illegality and/or enforceability of all of the within Agreement.
- C. The ability of the Supplier to provide sufficient Electric Generation Services for the Participants as more fully described in Section 2.01 herein.
- D. Any additional tariffs, rates, riders, fees, or customer load profile(s), or any changes to existing tariffs, rates, riders, fees, or customer load profile(s), charged or authorized by the LDC, PJM, BPU, FERC or other regulatory party relating to the acquisition, sale, delivery, and purchase of electricity that results in an increase or decrease in the cost for performance of this Agreement that is not known or anticipated as of the contract date, whereas such increase or decrease alters the LDC BGS-RSCP rate.
- E. There shall be any discontinuance in the BPU approved utility consolidated billing/purchase of receivables program.
- F. An adjustment to Contract Price shall be permitted under the following circumstances, but shall not include any profit, markup or service fee as permissible by New Jersey Law.
 - 1) A legislated change in the current 6.625% State Sales and Use Tax ("SUT"), in which case the price adjustment shall reflect the difference between newly enacted SUT rate and the 6.625% SUT rate in effect at the time Supplier submitted its Bid.
 - 2) A change in FERC-approved transmission NITS Charges implemented after the Effective Date of this Contract. In such instance either party may request for adjustment of the contract price by a percentage amount up to the percentage change in the Supplier's net direct total cost to provide Electric Generation Service to the Participant directly caused by the change in FERC-approved transmission NITS Charges, net of applicable offsetting credits received by the Supplier from PJM; or
 - 3) Change in Law. A change in law, regulation or tariff implemented after the date hereof that has a material impact on the cost to Electric Power Suppliers and Basic Generation Service suppliers for providing Electric Generation Service to residential customers, including to the Participant, in the applicable LDC transmission zone(s) in which Participant's Accounts are located. For this purpose, a material impact shall be an increase in cost of no less than \$0.0001/kWh. In such instance the Supplier may request adjustment of the contract price by a percentage amount up to the percentage change in the Supplier's direct total cost to provide Electric Generation Service to the Participant directly caused by the change in law. A change in law, regulation or tariff known to the Supplier at the time of the proposal submission date is not eligible for such adjustment.

Upon the occurrence of an event as described in Section 7.06F, the Supplier must provide thirty (30) days' notice of said increase or decrease to the Municipality and Energy Agents. Supplier must also provide notice to any affected Participant(s) on behalf of the participating municipality per N.J.A.C. 14:4-6.11 in writing of such change at least thirty (30) days prior to the effective date of the Contract Price increase to allow such Participant(s) sufficient time to Opt-Out of the program. Notice shall be sent by the supplier and provide postcard or a tear off portion to return along with pre-paid postage envelope. Any such increase would be limited such that it may not exceed the LDC BGS-RSCP price during the entire term of the Agreement. Supplier shall provide notice of any increase and upon request of the Municipality or its designated agent, provide reasonable documentation to support adjustments to the Contract Price implemented pursuant to this Section 7.06F of the Agreement.

Furthermore, upon the occurrence of any event listed in this Section 7.06, either Party may notify the other Party of such occurrence. Thereafter the Parties shall work in good faith for a period of 30 calendar days (excluding federal holidays) to amend the terms of the Agreement to resolve the impact of such occurrence, to the extent possible, provided, however, such change shall not affect the contract price except as specifically discussed in Section 7.06. In the event the Parties are unable to resolve any disputes pursuant this Section 7.06 in connection with the appropriate amendment to the terms of the Agreement, either Party shall have the option to terminate this Agreement by giving the non-terminating Party written notice of its election to terminate the Agreement. The notice of termination shall specify a termination date which must be not less than thirty (30) days after delivery to the other Party of the notice of termination.

7.07 Effect of Termination

In the event this Agreement is terminated for any reason pursuant to Section 7.06, upon the effective date of termination, neither Party shall have any further obligation to the other under this Agreement except that the provisions of this Agreement that expressly survives such termination shall continue to apply and the rights of either Party with respect to any Event of Default by the other Party that occurred prior to the effective date of termination shall survive, and the Parties shall have the right to receive payment for services performed hereunder prior to the effective date of such termination.

7.08 Remedies are Cumulative

The rights and remedies granted to the non-defaulting Party shall be cumulative and the exercise of any right shall not prejudice the enforcement of any other right or remedy authorized by this Agreement or under Applicable Laws.

7.09 Nonwaiver

No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient by the non-breaching Party in its sole discretion.

No waiver of the occurrence of any Event of Default hereunder, whether by the Supplier or the Municipality, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto. .

SECTION VIII - MISCELLANEOUS CONTRACT PROVISIONS

8.01 Assignment

No party shall assign this Agreement without a written instrument signed by the Municipality and the Supplier.

8.02 Cooperation Between the Parties

Each Party shall execute and deliver any instruments and perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement. Each Party shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the other Party; provided however, that such, actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry out the intent of this Agreement.

8.03 Relationship of the Parties

Except as otherwise explicitly provided herein, no Party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations which are to be assumed by any other Party and nothing in this Agreement shall be deemed to constitute any Party a partner, joint venture participant, agent, employer or legal representative of any other Party or to create any fiduciary relationship between or among the Parties.

8.04 Modification

Modifications, waivers or amendments of this Agreement or the provisions hereof shall be effective only if set forth in a written instrument signed by the Municipality and the Supplier.

8.05 Headings

The captions and headings in this Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or intent of this Agreement and such headings do not in any way constitute a part of this Agreement.

8.06 Notices

Any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if sent by facsimile to the number set forth below, delivered in person or mailed by certified or registered mail, postage prepaid, addressed as follows:

If to Municipality: City of Hoboken
94 Washington Street
Hoboken, NJ 07030

If to Supplier: Direct Energy Services, LLC
910 Louisiana Street
Houston, TX 77002
Attn: Thomas Prisk

If such notice is sent by facsimile transmission, the original executed copy of such notice shall be mailed or delivered as provided above.

If delivered personally, any notice will be deemed delivered and given on the date delivered if the day is a business day, or in the first business day following delivery if the date is not a business day. If sent by facsimile, any notice will be deemed delivered and given upon confirmation of receipt. If by certified or registered mail, any notice will be deemed delivered and given on the third business day after deposit thereof in a United States Post Office.

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party.

8.07 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties hereto.

8.08 Governing Law

The obligations of the Municipality and the Supplier under the terms of this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey, without regard to New Jersey's conflict of law rules, precedent or policies. The Parties hereto acknowledge and agree that the courts of the State of New Jersey shall be the exclusive venue and proper forum in which to adjudicate any case or controversy which remains unresolved pursuant to Section 8.14 herein below, arising either directly or indirectly from or in connection with this Agreement. The Parties further agree that, in the event of litigation arising out of or in connection with this Agreement in these courts, they will not contest or challenge the jurisdiction or venue of the courts, except to the extent jurisdiction properly lies with a State Administrative Agency or regulatory body.

8.09 Merger Clause

This Agreement (including any exhibits and/or addendums hereto) constitutes the entire agreement and understanding of the Parties with respect to the matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.

8.10 Subcontractors

Any subcontractor utilized by the Supplier shall obtain, prior to commencing the provision of services, and maintain throughout the term of the subcontract, all necessary federal, state, and local registrations, licenses and permits necessary to perform such services. Any and all such subcontractors who perform any of the duties of the Supplier under this Agreement shall perform the work in full compliance with all of the terms and conditions of this Agreement. The Supplier shall be fully responsible to the Municipality for all acts and omissions of its subcontractors, agents or persons or organizations engaged by the Supplier to furnish any services under a direct or indirect contract with the Supplier to the same extent that the Supplier is responsible for its own acts and omissions. Nothing in this Agreement shall create, or be construed to create, any contractual relationship between the Municipality and any such subcontractor, agent or person or organization.

8.11 Uncontrollable Circumstance

If the Municipality or Supplier are unable to perform any of its obligations under this Agreement as a result of acts of God, catastrophes, strikes or other disasters and failures of the electric transmission grid or LDC distribution system ("Uncontrollable Circumstance") beyond the control of the Municipality or Supplier, as the case may be, then, in that event, the provisions of this Agreement otherwise applicable to such non-performance shall become invalid. If an Uncontrollable Circumstance results in the delay of performance by any of the parties, then the time periods during which such performance is to be completed shall be extended to reflect such delays.

During an occurrence of any such Uncontrollable Circumstance, Supplier shall not be required to guarantee the uninterrupted supply of energy to Participants. Each Party hereto shall be excused for its failure to perform in accordance with this Agreement any obligation required to be performed by it hereunder, to the extent that such failure results from an Uncontrollable Circumstance, provided, that, in no event shall any Uncontrollable Circumstance excuse either Party from making any payment due hereunder in accordance with the terms hereof. Each Party shall seek diligently and in good faith to overcome or remove such Uncontrollable Circumstance, provided, however, that the settlement of any legal actions or administrative proceedings shall be entirely in the discretion of the Party suffering the same, and it shall not be required to make settlement of legal actions or administrative proceedings when such settlement would be unfavorable, in the judgment of the Party suffering the legal action or administrative proceedings. A Party claiming the benefit of this Section 8.11 shall give prompt written notice thereof to the other Party.

8.12 Waiver of Consequential Damages

Except as otherwise provided herein, in no event, whether based upon contract, tort, warranty or otherwise, shall either Party be liable to each other, or to any third party, for or obligated in any manner to pay incidental, special, consequential, punitive or indirect damages of any nature whether foreseeable or not, arising out of, or in connection with, this Agreement or in tort.

8.13 Disclaimer of Warranties

This Agreement shall not be subject to implied warranties of any type including Fitness for a Particular Purpose or Implied Warranties of Merchantability. Any waivers provided in this Section shall not be applicable to the Supplier's obligation to provide a sufficient level of Electric Generation Services to meet the full demands of the Participants as described in Section III herein.

In the event that Supplier is unable to supply the required Electric Generation Services, it shall be subject to damages equal to the difference between the price of Electric Generation Service provided by Supplier as calculated in Section 5.01(A) and the price paid by the each Participant for Electric Generation Services from an alternative source, not to be limited to but also include the currently applicable LDC BGS tariff price and damages for associated costs, if any, incurred by each customer in having to switch to an alternative source. Such difference shall be multiplied by the energy usage of the Participants measured in kWh for the remainder of the Contract Term.

8.14 Dispute Resolution

Subject to Applicable Laws, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, which the Parties are unable to resolve through negotiation or non-binding mediation themselves shall be finally settled by arbitration in accordance with this Section 8.14 and (except to the extent inconsistent with the express provisions of this Section), the Arbitration Rules of the American Arbitration Association. Upon a written demand for arbitration, each Party will select an impartial arbitrator within thirty (30) days after such demand, and the two arbitrators will select a third impartial arbitrator. If a Party fails to select an arbitrator within such thirty (30) day period, then the other Party may select an impartial arbitrator on its behalf. If the two arbitrators cannot agree on the selection of a third arbitrator within sixty (60) days after their appointment, either Party may request the selection of the third arbitrator by a judge of the Superior Court of New Jersey. The agreement to arbitrate disputes as provided in this Agreement shall be specifically enforceable in any court having jurisdiction. The Parties agree to make a good faith effort to cause the arbitration award to be made within one hundred and twenty (120) days of the naming of the third arbitrator. The award shall be in writing and shall include written findings of fact and conclusions of law.

8.15 Severability

In the event that any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof unless a court of competent jurisdiction so holds.

8.16 Counterparts

This Agreement may be simultaneously executed in several electronic, facsimile, or PDF counterparts, each of which shall constitute an original document and all of which shall constitute but one and the same instrument.

8.17 *Exculpation*

It is expressly understood and agreed that nothing in this Agreement shall be construed to create any personal liability on the part of officers, officials, employees, agents or representatives of any Party. Such exculpation of personal liability shall be absolute and without any exception whatsoever.

8.18 *Counting of Days*

In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

IN WITNESS WHEREOF, the Municipality and Supplier have executed this Agreement, intending to be legally bound hereby as of the day and year first above written.

***THE CITY OF HOBOKEN,
COUNTY OF HUDSON, NEW JERSEY***

ATTEST:

By: Anastacia Seguinot
Name: Anastacia Seguinot
Title: Legal Secretary

[SEAL]

By: [Signature]
Name: Jason Freeman
Title: Business Administrator

DIRECT ENERGY SERVICES, LLC

ATTEST:

By: [Signature]
Name: PAOLO BERARD
Title: ASSISTANT GENERAL COUNSEL

By: [Signature]
Name: Robert J. Gaudette
Title: President

