

## **MASTER POWER SUPPLY AGREEMENT**

This Master Power Supply Agreement ("Agreement") is entered into as of the \_\_\_\_\_ ("Effective Date") by and between Eligo Energy IL, LLC, an Illinois limited liability company with its mailing address at 201 W. Lake St., Ste 151, Chicago, IL 60606 ("Eligo" or "Vendor"), and City of Aurora, an Illinois City and Government Aggregator, with its principal place of business at 44 E Downer Place, Aurora, IL 60505 (the "City" or "Governmental Aggregator") (each a "Party" and collectively, "Parties").

### **RECITALS**

A. WHEREAS, Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92 ("Act") authorizes the corporate authorities of the City to establish a program to aggregate electrical loads of residential and Small Commercial Retail Customers, as defined below, and to solicit bids and enter into service agreements to facilitate the sale and purchase of electricity and related services and equipment for those electrical loads; and

B. WHEREAS, pursuant to the Act, municipalities may, if authorized by referendum, operate an Aggregation Program as an "opt-out" program that applies to all residential and Small Commercial Retail Customers who do not affirmatively choose not to participate; and

C. WHEREAS, the City sought competitive quotes to operate an Aggregation Program for its residents and duly adopted an ordinance to operate the Aggregation Program as an opt-out program under the Act and has complied with all the requirements of the Act to operate an opt-out program; and

D. WHEREAS, the City conducted a request for proposals pursuant to which licensed alternative retail electric suppliers were invited to participate in a public bidding process, and the Governmental Aggregator has selected Vendor as the winning bidder; and

E. WHEREAS, Vendor is registered with and certified by the ICC pursuant to an Order issued in Docket No. 13-0293 as an Alternate Retail Electric Supplier to sell competitive retail electric service to customers in the State of Illinois utilizing the existing transmission and distribution systems; and

F. WHEREAS, Vendor is certified by the ICC to operate as an Alternate Retail Electric Supplier in the service areas of Commonwealth Edison Company; and

G. WHEREAS, the City and Vendor desire to establish the rights and obligations of the Parties with respect to the Aggregation Program; and

H. WHEREAS, the City and the Vendor agree that the provision of renewable energy should be promoted in order to reduce pollution and reduce the use of limited natural resources of the United States; and

I. WHEREAS, the Vendor is willing and able to supply electricity for the Aggregation Program with corresponding Renewable Energy Certificates at a price which does not exceed the residential Price to Compare ("PTC") for ComEd electricity supply charges.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the meanings defined below except where the context indicates otherwise:

“Act” shall refer to the Illinois Power Agency Act, 20 ILCS 3855/1-1 *et seq.*

“Affiliate” shall mean any person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity that now or in the future directly or indirectly controls, is controlled by, or is under common control with Vendor.

“Aggregation” or "City Aggregation" shall mean the pooling of residential and small commercial retail electrical loads located within the City for the purpose of soliciting bids and entering into service agreements to facilitate for those loads the sale and purchase of electricity and related services and equipment all in accordance with Section 1-92 of the Act.

“Aggregation Area” shall have the meaning set forth in Section 1.1.1 of this Agreement.

“Aggregation Consultant” or “Consultant” shall refer to any independent consultant with demonstrated expertise in electric supply contracting that is retained by the City to assist with the implementation of the Program.

“Aggregation Group” shall mean all the residential and small commercial retail customers of ComEd in the corporate limits of the City that are permitted under the terms of the Act to participate in the Program.

“Aggregation Member” or "Member" shall mean a person or legal entity enrolled in the Aurora Municipal Aggregation Program for competitive retail electric services and a member of the Aggregation Group.

“Aggregation Program” or “Program” means the program developed and implemented by the City of Aurora, as a Municipal Aggregator under the Act, to provide ComEd residential and small commercial retail customers in the City with retail electric generation services.

“Alternative Retail Electric Supplier” or “ARES” shall mean an entity certified by all required authorities of the State of Illinois to provide competitive retail electric supply service(s), and which is duly selected by the City to be the entity responsible to provide the required retail electrical supply service related to an Aggregation Program as defined in the Act, City Ordinances and applicable rules and regulations of any authorized agency of the State of Illinois and has duly executed a Power Supply Agreement with the City. For purposes of this Plan, the definition of Alternative Retail Electric Supplier is more completely set forth in 220 ILCS 5/16-102.

“Ancillary Services” shall mean the necessary services that shall be provided in the generation and delivery of electricity, and shall include, without limitation: coordination and scheduling services (load following, energy imbalance service, control of transmission congestion); automatic generation control (load frequency control and the economic dispatch of plants); contractual agreements (loss compensation service); and support of system integrity and security (reactive power, or spinning and operating reserves).

“City” shall mean the City of Aurora, Illinois, acting by and through its corporate authorities, and authorized City employees.

“City Designee” shall mean the person (or persons) authorized to act on behalf of the City Board.

“City Event of Default” shall have the meaning set forth in Section 5.1.1 of this Agreement.

“Commonwealth Edison” or “ComEd” shall mean the Commonwealth Edison Utility Company as the entity that has a franchise, license, permit or right to distribute, furnish or sell electricity to retail customers within the Consortium Cities.

“Confidential Information” shall have the meaning set forth in Section 9.2 of this Agreement.

“Default Tariff Service” shall mean the electricity supply services available to eligible retail customers of Commonwealth Edison.

“Early Termination Date” shall have the meaning set forth in Section 5.2.1 of this Agreement.

“Eligible Customer” shall mean residential and small commercial electricity customers receiving Full Electricity Requirements within the City who are eligible to participate in the Aggregation Program. Eligible Customers exclude customers served by other alternative retail electric suppliers (including those “with RES” status on ComEd lists) and customers served under ComEd hourly and net metering tariffed supply service. Eligible Customers will be serviced by Vendor or ComEd based on certain Vendor criteria, including but not limited to customer usage patterns, transmission and capacity indicators as provided by ComEd, and wholesale market conditions. Eligible Customers will pay the same PTC and will continue to receive bills from ComEd regardless of whether they are served by Vendor or ComEd.

“Energy” shall mean generated electricity.

“Fixed Price” shall mean a non-variable and guaranteed Full Commodity Price for a specified period. This price includes all costs associated with delivering electricity to the Delivery Point and ComEd's Utility Consolidated Billing and Purchase of Receivables services (presently set at zero and subject to pass-through if changed to non-zero).

“Force Majeure Event” is defined in Section 6.2 of this Agreement.

“Full Commodity Price” shall mean the all-inclusive costs associated with delivering electricity to the Delivery Point plus costs associated with ComEd's Utility Consolidated Billing and Purchase of Receivables services. Such costs include, but are not limited to: tariff charges, rates and rate adjustments, transportation costs, capacity charges, ancillary service costs and credits, hedging and risk management fees, losses, and all other surcharges, taxes, custom duties/charges and balancing costs.

“Full Electricity Requirements” shall mean a sale of electricity supplies and services by the supplier in which the seller pledges to meet all of the each Member's requirements, and the Members pledge to buy all of their electricity requirements from the supplier, for the delivery period identified in the RFP.

“Governmental Aggregator” or “Municipal Aggregator” shall mean the City operating an Aggregation Program under the legislative authority granted the City to act as an aggregator to provide a competitive retail electric service to residential and small commercial retail customers of ComEd in the City. Pursuant to the Act, an Aggregator is not a public utility or an alternative retail electric supplier.

"ICC" shall mean the Illinois Commerce Commission as described in 220 ILCS 5/2-101.

“Insurance” shall mean the insurance policy (if required) enclosed in Exhibit D.

“Load” shall mean the total demand for electric energy required to serve the City residential and small commercial customers in the Aggregation Program.

“Opt-Out” shall mean the process by which a Member who would be included in the Program chooses not to participate in the Program.

“Opt-Out Notice” shall mean the notice delivered to each Member by the City, identifying the procedures and protocols for the Member to opt out or: and choose not to participate in, the Program

“Participating Customers” the Eligible Customers that do not opt out of the Aggregation Program. Participating Customers may be served by Vendor or remain on Tariffed Service with ComEd.

“PIPP” shall mean a Percentage of Income Payment Plan created by the Emergency Assistance Act, 305 ILCS 20•1 8, to provide a bill payment assistance program for low-income residential customers.

“PJM” shall mean PJM Interconnection, L.L.C., a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia, including the Commonwealth Edison service territory.

“Plan” or “Plan of Operation and Governance” shall mean this Aggregation Plan of Operation and Governance adopted by the City pursuant to the requirements set forth in Section 1-92 of the Act.

“Point of Delivery” shall mean the interconnection between the RTO and the Electric Utility to which Vendor shall deliver the electricity under the Aggregation Program for delivery by the Electric Utility to the Participating Customers.

“Power Supply Agreement” shall mean the contract between the City and the Alternative Retail Electric Supplier.

“Power Supply Bid” shall mean the procurement process utilized by the City on behalf of Eligible Retail Customers to solicit prices for services from certified Alternative Retail Electric Suppliers.

“Price to Compare” or “PTC” shall mean the unit price for ComEd electricity supply services which is the sum of the electricity supply charge plus the transmission services charge, including the purchased electricity adjustment (“PEA”), for non-electric space heating customers as established by ComEd Rider PE (Purchased Electricity) and Rate BES (Basic Electricity Service) or their successor Rates and Riders.

“Renewable Energy Certificate(s)” or “RECs” are market-based instruments that represent the legal property rights to the environmental attributes of renewable electricity generation sources.

“Retail Customer Identification Information” shall mean the retail customer information supplied by Commonwealth Edison to the Supplier in connection with the implementation of the Aggregation Program.

“RTO” shall have the meaning set forth in Section 2.1.1 of this Agreement.

“Regulatory Event” is defined in Section 2.6.1 of this Agreement.

“Retail Electric Supply” shall mean the unbundled sale and delivery of electric generation service to a single entity using electric power or energy at a single premises that is receiving tariffed transmission and distribution services from an electric utility.

“Services” is defined in Section 2.1 of this Agreement.

“Small Commercial Retail Customer” shall mean a retail customer with an annual electricity consumption of less than 15,000 kilowatt-hours; provided, however, that the definition of Small Commercial Retail Customer shall include such other definition or description as may become required by law or tariff.

“Supplier” or “Vendor” shall mean the Alternative Retail Electric Supplier, Eligo Energy IL, LLC, selected by the City to provide electricity supplies and services to Aggregation Members.

“Tariffed Service” shall have the meaning set forth in Section 2.5 of this Agreement.

“Term” is defined in Section 2.4.1 of this Agreement.

“Terms of Service” is defined in Section 2.1.1.

“Vendor Event of Default” shall have the meaning set forth in Section 5.1.2 of this Agreement.

“Withdrawing Customer” shall have the meaning set forth in Section 3.4 of this Agreement.

## **ARTICLE 1 GENERAL REQUIREMENTS**

### **1.1 Governmental Aggregator Obligations and Authority**

1.1.1 The Governmental Aggregator: (1) shall take all necessary action as required by the Act to develop, adopt and maintain an Aggregation Program for all applicable residential and Small Commercial Retail Customers within its boundaries (the "Aggregation Area") that the Governmental Aggregator has determined are eligible to participate in the Aggregation Program and which meet the definition of Eligible Customers set forth in this subsection; (2) shall request the names and addresses of Eligible Customers from the Electric Utility; (3) shall hold and publish notice of any required public meetings regarding the Aggregation Program; and (4) hereby authorizes Vendor to contract for Retail Electric Supply with those Eligible Customers that did not opt out of the previous aggregation program, do not opt-out of the present Aggregation Program, do not rescind their switch to Vendor as part of their enrollment in the Aggregation Program, do not otherwise terminate their participation in the Aggregation Program, or do not have their participation terminated by the Governmental Aggregator, or their Retail Electric Supply terminated by Vendor or the Electric Utility ("Aggregation Program Customer" or "Participating Customer").

1.1.2 The Governmental Aggregator shall, on a commercially reasonable basis and in a timely manner, forward to Vendor all notices from the Electric Utility concerning Participating Customers' accounts served pursuant to this Agreement, including but not limited to verbal or written notices regarding transition costs, changes in the terms and conditions of tariffs, rates or riders, and notices concerning the operation and reliability of the Electric Utility's system.

1.1.3 Governmental Aggregator has the authority to designate, and has designated, Vendor as its full requirements ARES for the Eligible Customers for the Term of this Agreement.

1.1.4 During the Term of this Agreement, the Governmental Aggregator hereby grants Vendor the exclusive rights to provide Retail Electric Supply to the Eligible Customers.

1.1.5 Customer Data and Load Forecast Information. Vendor and Governmental Aggregator shall cooperate to obtain the consent of Participating Customers to obtain all available Eligible Customers' data and historical load and load forecast information, related to the Participating Customer's load and consumption, from any entity in possession of such data, subject to the limitations on disclosure of customer information described in Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act and any other applicable laws or regulations. Additional costs for Participating Customers that are interval metered shall be borne by the Participating Customers.

1.1.6 Service Inquiries and Service Notices to Participating Customers. Participating Customers may direct inquiries regarding this Agreement, and Retail Electric Supply provided

hereunder, and any electric generation supply or billing questions, to Vendor at the address and phone number provided in Section 10.1, which address and phone number shall be provided in communications with Participating Customers regarding the Aggregation Program. Participating Customers should direct inquiries concerning Electric Utility related emergency, power outage, wire or service maintenance, metering, Electric Utility service billing or other similar Electric Utility related concerns to the Electric Utility.

1.1.7 Point of Sale. Governmental Aggregator and Participating Customers acknowledge and agree that Vendor shall have no responsibility for damage to any property, equipment or devices connected to the Participating Customers' electrical system. Notwithstanding the foregoing, Vendor shall act in such a manner so as to minimize the risk of damage to any Participating Customer's property.

1.1.8 Governor Aggregator will assist Vendor in providing periodic refresh mailings during the Term of this Agreement to Eligible Customers by requesting updated customer account lists from ComEd. All Eligible Customers who have previously exercised their right to opt-out or rescind from the Aggregation Program shall be omitted from all subsequent refresh mailing lists during the Term. All Eligible Customers enrolled pursuant to a refresh mailing or opted-in pursuant to this Agreement shall receive Retail Electric Supply at the prices set forth in Attachment A.

## **ARTICLE 2 VENDOR OBLIGATIONS**

### 2.1 Vendor Obligations.

2.1.1 Vendor shall supply all of the following services in support of the Program (collectively, the "Services"): Commencing on the Effective Date and during the Term, subject to the terms of this Agreement and the Terms of Service applicable to the Participating Customers (as set forth in Attachment B hereto) (the "Terms of Service"), Vendor shall provide Retail Electric Supply (subject to the terms of the appropriate transmission and/or distribution tariffs of the Electric Utility) sufficient to serve the total electric generation needs of the Participating Customers. Vendor shall arrange for the delivery of Retail Electric Supply in accordance with the requirements of the Participating Customers' respective Electric Utility and Independent System Operator ("ISO") or Regional Transmission Organization ("RTO") according to the rules, regulations, and tariffs governing Retail Electric Supply from an alternative supplier to the Point of Delivery, recognizing that the Electric Utility provides utility distribution service from the Point of Delivery to the Point of Sale. To the extent that any services or requirements are provided by the Electric Utility, Vendor shall not be responsible for the provision of such services. Notwithstanding the foregoing, Vendor is not responsible for the performance or failure to perform of the provider of such transmission, distribution, or ancillary services, or the consequences of such performance or failure to perform. Notwithstanding the foregoing, the City shall coordinate and operate with electric utilities in such a manner so as to not jeopardize the transmission, distribution or ancillary services.

2.1.2 Vendor shall be responsible for all acts necessary for Vendor to perform its obligations hereunder, including but not limited to the scheduling of delivery of Retail Electric Supply hereunder.

2.1.3 Vendor shall provide Aggregation Program Customers with the environmental disclosure data and other data it is required to provide, if any, to comply with applicable law and the rules of the ICC or other applicable authority.

2.1.4 Vendor may provide periodic refresh mailings during the Term of this Agreement. All Eligible Customers who have previously exercised their right to opt-out or rescind from the Aggregation Program shall be omitted from all subsequent refresh mailing lists during the Term. All Eligible Customers enrolled pursuant to a refresh mailing or opted-in pursuant to this Agreement shall receive Retail Electric Supply at the prices set forth in Attachment A.

2.1.5 Vendor shall purchase Renewable Energy Certificates to offset 100% of the estimated aggregate electricity usage of the City's Load. Vendor will procure a sufficient amount of RECs to enable the City to apply for the EPA Green Power Partnership program. Vendor will prepare the necessary paperwork and submit the Green Power Partnership application on the City's behalf; however, the decision to qualify the City as a Green Power Partner rests entirely with the EPA.

2.2 Subcontracting. Vendor may subcontract the performance of its obligations under this Agreement upon receiving written approval from the City. However, no subcontract shall relieve Vendor of any of its obligations and/or liabilities under this Agreement. Vendor shall be responsible for all payments and obligations as between Vendor and subcontractors, and Governmental Aggregator shall not be responsible for payments to any such subcontractor. Notwithstanding the foregoing, any subcontractor must perform the services described herein and no subcontract shall be utilized by Vendor unless and until the City has approved of the subcontractor in writing.

2.3 Compliance with Plan of Operation and Governance. Vendor shall comply with all the terms and conditions of the Act and shall comply with the Plan of Operation and Governance adopted by City, a copy of which Plan is marked as Attachment C and made a part hereof as if fully set forth by this reference. In the event of a conflict between this Agreement and the Plan, this Agreement shall control.

## 2.4 Term and Termination

2.4.1 Term of Agreement and Termination. The term of this Agreement shall commence for 18 months / billing cycles starting with the first meter reading in February 2020 (the "Term"). The Term may be renewed by mutual agreement by the Parties. No more than three (3) months prior to the end of the Term, Vendor shall initiate negotiations on pricing for any additional term with the Governmental Aggregator and its Consultant. If the Parties cannot agree upon a price, then this Agreement shall terminate, and Vendor, upon receiving notice from the Government Aggregator, shall facilitate the switch of the Participating Customers to default ComEd service. This Agreement may be terminated prior to the expiration of the Term in compliance with this Agreement's provisions, if: (1) a Party exercises its right under Article 5 to terminate this Agreement; or (2) a Regulatory Event occurs and the Parties are unable to mutually negotiate modification(s) to this Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for



the occurrence of the Regulatory Event. Vendor shall have the obligation to provide electricity for the full period of the Term regardless of the start date in which the power begins to flow.

2.4.2 Term of Enrollment. Vendor warrants that it will enroll Eligible Customers to start flowing as of the beginning of the Term. As provided for in the Terms of Service, Participating Customers shall remain enrolled in the Aggregation Program until the Participating Customer exercises the right to opt-out, or they otherwise terminate their participation in the Aggregation Program, their Retail Electric Supply is terminated by Vendor or the Electric Utility, or their electric service is terminated by the Electric Utility, whichever occurs first. In any case, the supply shall occur for the Term as contracted.

2.5 Interaction Between Termination Dates of this Agreement and Contracts with the Participating Customer. Participating Customers initially enrolled in the Aggregation Program shall receive Retail Electric Supply at the rate(s) set forth in this Agreement. If this Agreement is terminated prior to the end of the Term due to a Regulatory Event, then Retail Electric Supply will terminate early and the Participating Customers will be switched to the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 and defined by its rates on file with the ICC pursuant to 220 ILCS 5/Art. IX. ("Tariffed Service") in accordance with the standard switching rules and applicable notices. If this Agreement is terminated pursuant to the terms of Article 5, the Retail Electric Supply will terminate early, and the Participating Customers may choose another ARES Provider or will be switched to Tariffed Service in accordance with the standard switching rules and applicable notices. If this Agreement is terminated prior to the end of the Term pursuant to Article 5 and a Participating Customer has not selected another supplier, such Participating Customer will be switched to Tariffed Service from its Electric Utility.

## 2.6 Regulatory Contingencies.

2.6.1 Regulatory Events. The following as well as the events described in Section 2.6.3 will constitute a "Regulatory Event" governing the rights and obligations of the Parties under this Agreement:

(i) Illegality. If, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any judicial, regulatory, administrative or government authority with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this Agreement.

(ii) Material Adverse Government Action. If (A) any regulatory agency or court having competent jurisdiction over this Agreement requires a change to the terms of this Agreement that materially adversely affects a Party, or (B) any regulatory or court action adversely and materially impacts a Party's ability to perform or otherwise provide services pursuant to this Agreement.

2.6.2 Notice, Negotiation, and Early Termination. If the ICC shall take Regulatory action against Vendor, causing a Regulatory Event, Vendor shall give notice to the other Party that such event has occurred. The Parties will mutually attempt to negotiate modification(s) to this Agreement so that the adversely-affected Party may be restored to a reasonably similar economic

position that the adversely-affected Party would have been in but for the occurrence of the Regulatory Event. If the Parties are unable, within thirty (30) days of entering into negotiations, to agree upon modification(s) to this Agreement, the adversely affected Party shall have the right, upon thirty (30) days notice, to terminate this Agreement without liability and close out its obligations hereunder.

2.6.3 Regulatory Events Defined. Regulatory changes or rulings, legislative and agency acts, and judicial rulings covered by preceding Section 2.5.1, include but are not limited to: (i) material changes (including by PJM) affecting Vendor's ability to provide services ICC Certification applicable to this Agreement/franchise status, fees, costs, or requirements; (ii) other material changes or clarifications of federal, state or local government certification, licensing or franchise requirements for Alternative Retail Electric Suppliers in Illinois.

2.7 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement. No consequential damages or lost profits shall be paid as damages under this Agreement.

2.8 Termination Notices. In the event of termination hereunder, the terminating Party shall exercise its commercially reasonable efforts to communicate to the non-terminating Party the upcoming possibility of termination. In the event that this Agreement is terminated prior to the end of the Term, each individual Participating Customer of the Aggregation Program will be provided written notification from the terminating Party of the termination of this Agreement at least thirty (30) days prior to termination, and in compliance with other regulatory or legal requirements, and Participating Customers will also be notified of their right to return to the Electric Utility or to select an Alternate Retail Electric Supplier. All other notification(s) shall be in accordance with ICC requirements.

### **ARTICLE 3 ENERGY SCHEDULING, TRANSMISSION, PRICING AND DELIVERY**

3.1 Scheduling, Transmission and Delivery of Power. During the Term, Vendor shall schedule Energy as required by the RTO or other transmission provider and the Electric Utility, and shall arrange for transmission and distribution service to the Participating Customers. Vendor will arrange for necessary electric distribution and transmission rights for delivery of such Energy to provide the Retail Electric Supply hereunder and subject to the understanding that Vendor has an obligation to make deliveries to Participating Customer as set forth in Section 2.1 except pursuant to Section 2.6 or Article 6 of this Agreement. Vendor does not take responsibility for any delivery of services supplied by the Electric Utility or RTO, or for the consequences of the failure to provide such services. Vendor shall not be responsible to Participating Customer in the event the Electric Utility or RTO disconnects, suspends, curtails or reduces service to Participating Customer (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Electric Utility's facilities, or to maintain the safety and reliability of the Electric Utility's electrical system, or due to emergencies, forced outages, potential overloading of the Electric Utility's transmission and/or distribution circuits, or a Force Majeure Event or for any other reason permitted by the Electric Utility's tariff or any other acts or omissions of the Electric Utility.

### 3.2 Pricing

3.2.1 During the Delivery Period, Vendor shall provide Retail Electric Supply to all Participating Customers at the pricing set forth on Attachment A, Initial Term Pricing. The Vendor shall receive the price in full payment for all Services, and shall not be entitled to any additional costs, adjustments, charges, fees, or any other payments or compensation. The City acknowledges that the price does not include sales or other consumer-based taxes applicable to Participating Customers or other taxes that are not applicable to the Vendor.

3.3 Failure of Delivery. In the event that Vendor fails to schedule all or part of the Retail Electric Supply as set forth herein and Vendor's failure is not due to a Force Majeure Event, and a Participating Customer is required to obtain and pays for Tariffed Service or other Energy supply arrangement necessary to cure such Energy deficiency, Vendor shall reimburse Participating Customer, no later than ten (10) days after receipt of invoice or the date payment would otherwise be due to Vendor, an amount determined by multiplying (a) the aggregate deficiency in the Retail Electric Supply by (b) the Replacement Price. IN THE EVENT OF VENDOR'S FAILURE TO PERFORM DUE TO A NON-FORCE MAJEURE EVENT, VENDOR'S OBLIGATION TO PAY SUCH AMOUNT DURING THE PERIODS OF NON-DELIVERY SHALL BE THE GOVERNMENTAL AGGREGATOR'S AND THE PARTICIPATING CUSTOMERS' SOLE REMEDY FOR VENDOR'S FAILURE TO DELIVER ENERGY PURSUANT TO THE TERMS OF THIS AGREEMENT.

3.4 Participating Customer Early Termination. As set forth in Attachment A, the Aggregation Program includes a fixed price per Participating Customer for the Term of the Aggregation Program. As set forth in the Terms of Service, in the event that a Participating Customer terminates (a "Withdrawing Customer") its participation in the Aggregation Program while a fixed price is in effect, Vendor may not charge the Withdrawing Customer an early termination fee, except Vendor may, at any time, contact each Withdrawing Customer for purposes of maintaining such Withdrawing Customer as a Vendor customer.

## **ARTICLE 4 BILLING AND PAYMENTS**

4.1 Payment of Switching Fees. The Vendor shall reimburse Participating Customers for any switching fee imposed by the Electric Utility related to the enrollment of a Participating Customer in the Program within 30 days of receiving notice of such switching fee. The Vendor shall not be responsible to pay any switching fees imposed on Participating Customers who switch service from another Alternative Retail Electric Supplier.

4.2 Billing. The Electric Utility shall provide consolidated billing and Purchase of Receivables services pursuant to the Electric Utility's tariff provisions and ICC rules applicable to Participating Customers. The Governmental Aggregator acknowledges and agrees that the Electric Utility will bill Participating Customers for Retail Electric Supply and all applicable charges as part of its billing for the distribution of such supply, and that Vendor shall not be responsible for billing Participating Customers. Vendor retains the right to assess late payment fees on, or deem such non-payment a default of Participating Customer, if a Participating Customer fails to pay amounts due within the specified time period for said payments. Vendor may not convert Participating

Customer from consolidated billing to dual billing, or from dual billing to consolidated billing, without the prior written consent of the Governmental Aggregator, which consent shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 5 DEFAULT AND REMEDIES**

### **5.1 Event of Default.**

5.1.1 A "City Event of Default" shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

(i) Any representation or warranty made by City in Article 8 hereunder is false or misleading in any material respect when made or when deemed made; and

(ii) The non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above) and such failure is not remedied within thirty (30) days after written notice thereof unless the cure requires longer than the thirty (30) days to effect and City is diligently working towards such cure.

5.1.2 A "Vendor Event of Default" shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

(i) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not fully remedied within ten (10) business days after written notice;

(ii) any representation or warranty made by Vendor in Article 8 hereunder or elsewhere in this Agreement is false or misleading in any material respect when made or when deemed made; and

(iii) the non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above) if such failure is not remedied within thirty (30) days after written notice thereof, unless the cure period reasonably requires more than thirty (30) days to effect and Vendor is diligently working towards such cure.

### **5.2 Rights and Remedies.**

5.2.1 Rights and Remedies for a City Event of Default. Subject to other provisions of this Agreement, if City is the defaulting Party hereunder, so long as such City Event of Default shall have occurred and be continuing, Vendor shall have the right to (i) designate a date ("Early Termination Date"), no earlier than the day such notice is effective and no later than sixty (60) days after such notice is effective, on which this Agreement shall terminate and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, or (iii) have all other rights and remedies available at law and in equity. In addition to the foregoing

remedies, Vendor shall have the right to seek the remedies of specific performance of City's and Participating Customers' obligations hereunder and/or injunctive relief to continue to provide Retail Electric Supply hereunder.

5.2.2 Rights and Remedies for a Vendor Event of Default. Subject to other provisions of this Agreement, if Vendor is the defaulting Party hereunder, so long as such Vendor Event of Default shall have occurred and be continuing, City shall have the right to (i) designate an Early Termination Date, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, City shall have the right to seek the remedies of specific performance and/or injunctive relief.

Notwithstanding any other provision of this Agreement, the remedies set forth in Section 3.3 shall be the sole and exclusive remedies for any failure of Vendor to deliver Retail Electric Supply. As long as Vendor is supplying Retail Electric Supply to the Participating Customers at the price and upon the terms and conditions of this Agreement, City shall not have the right to terminate this Agreement, suspend performance or pursue other remedies, and Vendor shall have no liability to Participating Customers for damages.

5.2.3 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 damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.

## **ARTICLE 6 FORCE MAJEURE**

6.1 Excused Failure to Comply. Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly and specifically from a Force Majeure Event related to the operation of this Agreement. If despite its commercially reasonable efforts, either Party is unable, wholly or in part, to meet its obligations under this Agreement due to a Force Majeure Event, the obligations of each Party, other than the obligation to make payments due for performance rendered hereunder, so far as they are affected by such Force Majeure Event, shall be suspended during such period of the Force Majeure Event. The Party claiming excuse due to a Force Majeure Event shall exercise best efforts and due diligence to remove the inability to perform as soon as reasonably possible so that the affected period shall be no longer than that necessarily affected by the Force Majeure Event and shall exercise best efforts and due diligence to mitigate the effects of the Force Majeure Event. Nothing contained in this Section 6.1 shall be construed as requiring a Party to settle any strike or labor dispute in which it may be involved. The occurrence of Force Majeure Events shall automatically extend the Term and any relevant Cure Period on a day to day basis equal to but not exceeding the length of the Force Majeure Event.

6.2 Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean any non-economic cause beyond the reasonable control of the Party affected and shall include, but not be limited to, Acts of God, winds, floods, earthquakes, storms, droughts, fires, pestilence, rapture, destructive lightning, hurricanes, washouts, landslides, tornadoes and other

natural catastrophes; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbances or disobedience, sabotage, wars or blockades; alien (i.e., extraterrestrial) invasion; the failure of facilities, governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental or ISO authority, a change in law or court order; provided, however, that any such discretionary acts, failure to act or orders of any kind by Governmental Aggregator may not be asserted as a Force Majeure Event by Governmental Aggregator; or any other reasonably unplanned or non-scheduled occurrence, condition, situation or threat not covered above and not caused by a Party's action or inaction, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control of the Party claiming such inability. A change in economic electric power market conditions may constitute a Force Majeure Event. Failure or interruptions, including without limitation, government ordered interruptions, on the systems of generation, transmission or distribution relied upon for supplying Energy under this Agreement shall constitute a Force Majeure Event provided that Vendor has arranged for service on these systems at a level of firmness as required to provide the Retail Electric Supply agreed upon herein.

6.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, then said Party shall notify the other Party in writing as soon as possible, but no later than seventy-two (72) hours after the start of the Force Majeure Event. Notwithstanding the foregoing, in the event of an anticipated Force Majeure Event, notice must be provided as soon as possible. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

## **ARTICLE 7 LIMITATION OF LIABILITY**

7.1 LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER, TO A PARTICIPATING CUSTOMER OR TO A THIRD PARTY FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON A STATUTE, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN SECTION 3 AND ARTICLE 5 OF THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH SECTION 3.3 OR ARTICLE 5 PROVIDES THE EXPRESS REMEDY OR MEASURE OF DAMAGES, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. FOR ALL OTHER PROVISIONS OF THIS AGREEMENT FOR WHICH NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL

DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

7.2 DISCLAIMER. VENDOR DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF RETAIL ELECTRIC SUPPLY TO AGGREGATION PROGRAM CUSTOMERS DURING FORCE MAJEURE EVENTS. VENDOR WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE ELECTRIC UTILITY, INCLUDING BUT NOT LIMITED TO, THE INTERRUPTION, TERMINATION, FAILURE TO DELIVER, OR DETERIORATION OF ELECTRIC UTILITY'S TRANSMISSION OR DISTRIBUTION SERVICE. EXCEPT AS MAY BE SPECIFICALLY PROVIDED HEREIN, NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT.

7.3 THE CITY SHALL NOT BE LIABLE FOR OR CHARGED ANY ADDITIONAL COSTS OR FEES FOR DISCHARGING ITS OBLIGATIONS UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE OBLIGATION TO PROVIDE INFORMATION OR COOPERATE).

7.4 VENDOR SHALL FULLY REIMBURSE ALL PARTICIPATING CUSTOMERS FOR ALL REPLACEMENT EXPENSES NO LATER THAN TEN (10) DAYS AFTER RECEIPT OF INVOICE FOR ALL EXPENSES INCURRED.

## **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

8.1 Representations and Warranties by Vendor.

8.1.1 Vendor hereby represents and warrants to City as of the Effective Date as follows:

(i) Vendor is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Illinois and certified as an Alternative Retail Electric Supply in the State of Illinois pursuant to ICC Docket No. 13-0293;

(ii) Vendor 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;

(iii) Vendor only retains and shall only retain experience and financially qualified subcontractors that are not governmentally disbarred or otherwise prohibited from performing work for public entities;

(iii) The execution and delivery of, and performance under, this Agreement are within Vendor's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it;

(iv) This Agreement has been duly executed and delivered by Vendor, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of Vendor enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(v) No Bankruptcy is pending against it or to its knowledge threatened against it.

(vii) None of the documents or other written information furnished by or on behalf of Vendor to the City contains any untrue statement of a material fact or omits to state any material fact or is misleading;

(viii) Vendor is not in default with any order, writ, injunction or decree of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would prevent Vendor from complying with the terms and conditions of this Agreement;

(ix) That there are no actions, proceedings or investigations, either threatened or anticipated, pending or threatening Vendor before any court or before any governmental department, commission, board, agency or instrumentality, nor does Vendor know or have reasonable ground to know of any basis for any such action, proceeding or investigation against Vendor which would prevent Vendor from complying with the terms and conditions of this Agreement;

(x) There are no reasonably anticipated Regulatory Events.

## 8.2 Representations and Warranties by City.

8.2.1 City hereby represents and warrants to Vendor as of the Effective Date as follows:

(i) City has complied with all of the requirements under the Act for City to provide for the aggregation of electrical loads for residential and Small Commercial Retail Customers within the corporate limits of City as an opt-out program;



(ii) City has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement;

(iii) The execution and delivery of, and performance under, this Agreement are within City's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it; and

(iv) This Agreement has been duly executed and delivered by City, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of City, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization and similar laws affecting creditors' rights and remedies generally, to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

## **ARTICLE 9 CONFIDENTIAL INFORMATION**

9.1 Confidential Information. To the extent permitted by law, any Confidential Information made available pursuant to this Agreement and conspicuously marked or stamped as "Confidential" shall be held in confidence by each of the Parties to protect the legitimate business needs and/or privacy interests of the Parties. With respect to multi-page documents that contain Confidential Information, the Parties may make such a designation by marking or stamping only the first page thereof. The Parties shall identify any matter deemed to be Confidential Information at the time the information is provided. Any information not designated as Confidential Information shall not be covered by the protection contemplated herein, provided, however, that the inadvertent provision of information without a confidential designation shall not itself be deemed a waiver of the Party's claim of confidentiality as to such information, and the Party may thereafter designate the same as confidential, if the information is deemed confidential as set forth herein.

9.2 Confidential Information Defined. "Confidential Information" means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one Party (the "Disclosing Party") to the other Party (the "Recipient") regarding itself, its business, the business of its Affiliates, and/or the Aggregation Program. Confidential Information does not include information that: (a) is in the public domain at the time of disclosure; (b) passes into the public domain after disclosure, except by a wrongful act of the Recipient; (c) is disclosed to the Recipient by another not under an obligation of confidentiality; (d) is already in the Recipient's possession prior to disclosure by the Disclosing Party; or (e) is subject to disclosure by the City pursuant to the Illinois Freedom of Information Act. (5 ILCS 140/1, *et. seq.*)

9.3 Obligation of Confidentiality. Each Party agrees, for itself and its authorized representatives, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes in connection with this Agreement, except to the extent that the Recipient determines that release of Confidential Information is required by law or regulation. The Recipient shall make commercially reasonable efforts to notify the Disclosing

Party if it intends to release any Confidential Information to afford the Disclosing Party an opportunity to seek a protective order prior to disclosure. The obligations for Confidentiality set forth in this Agreement, including but not limited to the non-disclosure obligations and the duty to return Confidential Information upon written request, shall survive the termination of this Agreement for a period of one (1) year thereafter. Nothing in this Section 9.3 shall limit, hinder, or restrict City from complying with the State Records Act, 5 ILCS 160/1 *et seq.*, and the Freedom of Information Act, 5 ILCS 140\1 *et seq.*, any and all subpoenas, orders, directives, or similarly valid requests for documents or information issued by any court of law, governmental entity or administrative entity nor shall City be found to have violated this provision, or any other provisions of this Agreement, for having fulfilled a valid Public Records Request ,Freedom of Information Request or any subpoenas, orders, directives or similarly valid requests for documents or information issued by any court of law, governmental entity or administrative entity.

## **ARTICLE 10 MISCELLANEOUS**

10.1 Notices. Any notices, requests or demands regarding the services provided under this Agreement and the Attachments shall be deemed to be properly given or made (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address shown below; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party.

Eligo Energy IL, LLC

City

For Notices or Inquiries Regarding this Agreement:

For Notices or Inquiries Regarding this Agreement:

Alexander Rozenblat

Name: Richard J. Veenstra

General Counsel

Title: Corporation Counsel

Eligo Energy IL, LLC

City of Aurora

201 W. Lake St., Ste 151,  
Chicago, IL 60606

44 E Downer Place  
Aurora, IL 60505

Phone: 312-600-3763

Phone: 630-256-3060

Fax: 312-600-3763

Fax: 630-256-3069

Email: [arozenblat@eligoenergy.com](mailto:arozenblat@eligoenergy.com)

Email: [rveenstra@aurora-il.org](mailto:rveenstra@aurora-il.org)

10.2 Entire Agreement. This Agreement, including all Attachments hereto, contains all of the terms and conditions of this Agreement reached by the Parties, and supersedes all prior oral or

written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by all Parties hereto.

10.3 Waivers. Any request for a waiver of the requirements and provisions of this Agreement shall be in writing and must be approved in writing by the non-waiving Party. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.

10.4 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard for the conflicts of law provisions thereof. Jurisdiction and the venue for any cause of action between the Parties relating to the terms of this Agreement shall be solely and exclusively filed in the Circuit Court of Kane County, Illinois.

10.5 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of the Attachments hereto, the provisions of this Agreement shall control. Vendor shall be entitled to use its Terms of Service as its terms of service for any Participating Customer.

10.6 Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

10.7 Non-Assignability. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the non-assigning Party, which authorization shall not be unreasonably withheld, conditioned or delayed; provided, however, that such authorization may be withheld upon a reasonable determination that the proposed assignee does not have at least the same financial and technical abilities. Notwithstanding the foregoing, Vendor may, without the consent of City, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to an Affiliate of Vendor; or (c) transfer or assign this Agreement to any person or entity succeeding to all or a substantial portion of the assets of Vendor. Upon an assignment pursuant to (b) or (c), City agrees that Vendor shall have no further obligations regarding future performance hereunder. Either Party's assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including the Attachments. Subject to the foregoing, this Agreement and its Attachments shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.

10.8 Forward Contract. The Parties acknowledge and agree that (a) this Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code, and (b) Vendor is a forward contract merchant.

10.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the date first written above.

**ELIGO ENERGY IL, LLC**

**CITY OF AURORA, ILLINOIS**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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

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

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

## Attachment A to Master Agreement

### Term:

Initial Term: As defined in Section 2.4.1 of this Agreement.

Renewal Terms\*: Renewed by Mutual Agreement

**Initial Term Pricing:** ComEd Price to Compare (“PTC”) in effect for each billing cycle (“kWh Rate” or “Price”) during the Term of this Agreement.

### Fees & Obligations:

1. **Administrative Fee.** Vendor and Governmental Aggregator agree during the Term of this Agreement to an administrative fee of \$20,000 per 12 months of the Term, payable in equal monthly installment payments to Progressive Business Solutions within 30 days after the last meter read cycle of each delivery month.
2. **Green Grant.** Vendor will provide a **TBD** civic fee to the City per 18 months of the Term (to be prorated if Term is 17 months). The civic fee will be payable in equal monthly installment payments to the City of Aurora, within 30 days after the last meter read cycle of each delivery month.
3. **Renewable Energy Certificates.** During the Term of this Agreement, Vendor shall purchase **[Midwest RECs / Midwest Wind RECs]** Renewable Energy Certificates to offset 100% of the estimated aggregate electricity usage of the City’s Load. Vendor will procure a sufficient amount of RECs to enable the City to apply for the EPA Green Power Partnership program. Vendor will prepare the necessary paperwork and submit the Green Power Partnership application on the City’s behalf; however, the decision to qualify the City as a Green Power Partner rests entirely with the EPA.
4. **Termination.** Participating Customers may terminate service from Vendor at any time after the Rescission Period without penalty or an early termination fee.
5. **Switching Fee.** Vendor shall continue service at the same rate and under the same terms and conditions for any Participating Customer who relocates within the City prior to the expiration of the Initial Term. Moving within the City may cause the Participating Customer to be served for a brief period of time by ComEd.

### Vendor Administrative Services:

- Design, print and mail opt-out letters and/or informational letters to all Eligible Customers and/or customers staying on ComEd default service
- Administer opt-out process
- Provide a call center to handle information calls
- Maintain a database that will include the name, address, Commonwealth Edison account number, and Retail Electric Suppliers’ account number of each active Member, and other

## **Attachment A to Master Agreement**

pertinent information such as rate code, rider code (if applicable), most recent 12 months of usage and demand, and meter reading cycle. The database will be updated at least quarterly. Accordingly, the Vendor will develop and implement a program to accommodate Members who (i) leave the Aggregation Group due to relocation, opting out, etc. (ii) decide to join the Aggregation Group; (iii) relocate anywhere within the corporate limits of the City, or (iv) move into the City and elect to join the Aggregation Group. This database shall also be capable of removing a Member from the Aggregation Group who has duly opted out of the Program. The Vendor will use this database to perform audits for clerical and mathematical accuracy of Member electric supply bills. The Vendor will make the database available to the City at any time the City requests it.

- **Member Education:** The Vendor shall develop and implement, with the assistance of the City and its consultant, as the City may determine in its sole discretion, an educational program that generally explains the Aggregation Program to all residential and small commercial retail customers in the City and the Aggregation Group, provides updates and disclosures mandated by Illinois law and applicable rules and regulations, and implements a process to allow any Member the opportunity to opt out of the Aggregation Program according to the terms of the Power Supply Agreement.

## Attachment B to Master Agreement

Eligo Energy IL, LLC - Terms of Service - Municipal Aggregation Customers

### City of Aurora Electric Aggregation Program

The City of Aurora, pursuant to the municipal aggregation authority, which passed by a majority of the vote, selected Eligo Energy IL, LLC ("Vendor" or "Supplier") to supply the aggregation and to administer enrollments as described below. You, the account holder (also referred to as "Customer") for the utility account ("Account") applicable to the service address referenced on the letter accompanying this Opt Out Notice (the "Account"), and Vendor agree to the following terms and conditions. Vendor and Customer (individually referred to as "Party" and collectively as "Parties") agree to the following Terms of Service ("Agreement"), as of [first meter read date in October 2018] (the "Effective Date"). This Agreement authorizes Vendor to change Customer's electric supplier in the territory of Commonwealth Edison (the "Utility").

**1. Price and Service:** For the Initial Term, Customer shall pay the ComEd Price to Compare ("Kwh Rate" or "Price"), multiplied by the billing cycle usage for the Utility account numbers ("Accounts"). Both Parties recognize that components of Vendor's charges include electric tariff charges that are authorized by the Illinois Commerce Commission, Independent System Operator, other state or governmental agencies having jurisdiction, and/or the Federal Energy Regulatory Commission. Any new tariff charges that become effective after the Utility completes Customer's enrollment and Vendor's services commence (the commencement of the "Delivery Period") may be directly passed through to Customer by a corresponding increase in the Price. Vendor shall not impose any fees or charges on Customer other than the Price set forth above. While Vendor does not charge Customer a separate fee to switch to Vendor's service, if Customer is currently receiving electricity pursuant to an agreement with another alternative retail electric supplier, that supplier may charge Customer for switching electricity providers. Customer may compare the fixed price terms herein to market conditions by looking at the rates posted on Vendor's website and on Customer's monthly bill. In addition, Customer shall pay and be responsible for all other amounts related to the purchase and delivery of electricity, including applicable taxes and charges. If Customer is interval metered, Customer shall also be responsible for additional costs resulting therefrom. Please see Vendor's website [www.eligoenergy.com](http://www.eligoenergy.com) for current market conditions and updates.

**2. Enrollment:** (a) Opt-Out Enrollment (Automatic Enrollments due to non-action by \_\_\_\_\_ DATE). Enrollment is automatic if (i) the account(s) to be served is/are eligible and (ii) Customer does not opt-out of City's electric aggregation program. IF YOU DO NOT WISH TO PARTICIPATE IN THE AGGREGATION PROGRAM, YOU MUST OPT-OUT BY \_\_\_\_\_ DATE. YOU CAN OPT-OUT BY RETURNING THE POSTCARD. (b) Opt-In Enrollment (Affirmative Enrollments). Enrollment for the remainder of the current program is open to those who opt-out or are otherwise not automatically enrolled if (i) the account(s) to be served is/are eligible and (ii) Customer chooses to opt-in to the program. You can Opt-In by (1) calling Vendor toll free at 1-888-744-8125 or (2) contacting Vendor online at [www.eligoenergy.com/cities/il/Aurora](http://www.eligoenergy.com/cities/il/Aurora).

**3. Eligibility:** Customer and the Accounts to be served (i) must be located within the jurisdictional boundaries of the City, (ii) must be served by the Utility on one of the following rate classes: BES,

## Attachment B to Master Agreement

BESH, and RDS (which in general terms apply to residential non-electric space heat service and small commercial customers), (iii) may not be under agreement with another Alternative Retail Electric Supplier, and (iv) must be in good credit standing with the Utility.

4. **Term:** This Agreement shall become binding on the Effective Date, however, this Agreement is contingent upon: (a) successful enrollment by the Utility and (b) the passage of the Rescission Period without effective cancellation by Customer. Successful enrollment by the Utility is dependent upon (i) the eligibility of Customer's Utility accounts, as determined by the Utility, to take service from an alternative retail electric supplier and to participate in the Utility's purchase of receivables program, and (ii) the accuracy and completeness of the information submitted for enrollment. Service will commence on the later of (a) the meter read in [December 2019] or (b) the first meter read date following successful enrollment by the Utility. Service shall remain in effect for 18 months / billing cycles ("Initial Term"), unless terminated pursuant to the terms of this Agreement. This Agreement will start when Vendor provides confirmation to Customer's local distribution company and the local distribution company initiates the change.

5. **Rescission Period:** Customer may cancel enrollment by contacting the Supplier at 312-260-0885 without penalty up to 10 calendar days after the Utility processes the enrollment request (the "Rescission Period").

6. **Termination; Remedies:** If either Party defaults on its obligations under this Agreement (which may include Customer's switching to another electric supplier or the Utility or Customer's failure to pay the Utility), the other Party may terminate this Agreement, as applicable. In addition, if Customer chooses to terminate this Agreement based on a recommendation from the City in the event that Vendor has materially breached the Aggregation Program Agreement between Vendor and the City, then Vendor shall not be liable to Customer for any damages or penalties resulting from such termination of this Agreement, including claims related to the price received from the Utility or an alternate retail electric supplier being higher than the Price herein, unless Vendor has also materially breached these Terms of Service.

7. **Renewal:** In the event that Vendor enters into an agreement with the City to renew the municipal aggregation agreement before the expiration of the Initial Term, between 30 and 60 days prior to the end of the Initial Term or a Renewal Term (whichever is in effect, hereinafter the "Current Term"), Vendor may send Customer an offer for a Renewal Term. This offer will include, without limitation, the new Price, any applicable early termination fees (if any), and the Renewal Term ("Offer"). In the event Vendor does not receive Customer's rejection of the Offer within 21 days, the Offer will be deemed accepted by Customer without the need for further signature or other affirmative action by Customer. If Customer rejects the Offer in the manner directed in the Offer, Customer's Accounts will be returned to Utility service at the end of the Current Term.

8. **Billing and Payment:** Customer will continue to receive one monthly electric bill processed and provided by the Utility for Vendor's charges and Utility's delivery charges on the invoice(s) Customer receives from the Utility, and such billing and payment shall be subject to the applicable Utility rules regarding billing and payment procedures. Vendor's charges or credits not invoiced through the Utility shall be invoiced or credited, respectively, directly by Vendor. Vendor may cause the Utility to correct previous invoices in the event of invoicing errors. In the event of a Customer bankruptcy, late payment or nonpayment, Vendor has the right to cancel this Agreement.



## Attachment B to Master Agreement

9. **Taxes:** Any tax levied against Vendor by any governmental entity, exclusive of Vendor's income tax or taxes levied on Vendor's real or personal property, which must be paid by Vendor shall be passed through to and borne and reimbursed by Customer. Customer must provide Vendor with any applicable exemption certificates. Customer shall pay any such taxes unless Vendor is required by law to collect and remit such taxes, in which case Customer shall reimburse Vendor for all amounts so paid.

10. **Contact Information:** For any service question or in the event of an emergency such as a power failure or downed power line, Customer should contact ComEd at 800-334-7661. Customer may contact Vendor at 888-744-8125. For issues concerning this Agreement, Vendor will attempt to resolve the matter within 5 business days of receiving a call or the complaint from Customer. If Customer is not satisfied with the response, or to obtain consumer education materials, Customer may contact the Illinois Commerce Commission at 800-524-0795 or 800-858-9277 for TTY hearing-impaired Customers or visit its website at [www.icc.illinois.gov](http://www.icc.illinois.gov). Customer may also contact the Illinois Attorney General's Office at 1-800-386-5438. Customer shall contact Vendor with any change in Customer's email address and/or withdrawal of consent for electronic retention of customer information.

11. **Customer Relocation:** Vendor will waive any fees if Customer moves to a new address outside the City's boundaries and provides notice to Vendor that Customer is moving prior to termination.

12. **Assignment:** Customer may not assign this Agreement without Vendor's written consent. Vendor may transfer, assign or sell this Agreement: (a) in connection with any financing; (b) to any of its affiliates; (c) to anyone succeeding to all or substantially all of Vendor's assets or business; or (d) to another supplier licensed by the Illinois Commerce Commission. This Agreement is binding upon Customer and Vendor, and each party's heirs, successors and permitted assigns. Any required assignment notice will be considered to have been made if mailed to the address in Vendor's records for Customer's account. There are no third-party beneficiaries to this Agreement.

13. **Exclusion of Cash Back Bonus:** As a municipal aggregation Customer, Customer is not eligible to participate in Vendor's promotional cash-back or rebate bonus program.

14. **Limitations:** ALL ELECTRICITY SOLD HEREUNDER IS PROVIDED "AS IS", AND VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT, WHETHER IN AGREEMENT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

15. **Force Majeure:** Except for Customer's obligation under this Agreement to pay Vendor for its services, neither Vendor nor Customer will be liable to the other for failure to perform an obligation either was prevented from performing due to an event beyond its reasonable control, that could not be remedied by the exercise of due diligence and that was not reasonably foreseeable, including without limitation, acts of God, a condition resulting from the curtailment

## Attachment B to Master Agreement

of electricity supply or interruption or curtailment of transmission on the electric transmission and/or distribution system, interruption of utility service, terrorist acts or wars, and force majeure events of the utility or independent system operator.

16. **Miscellaneous:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard for the conflicts of law provisions thereof. Title, possession, control of the electricity, and risk of loss will pass from Vendor to Customer at the delivery point, which shall be the Utility. Customer appoints Vendor as its agent for the purposes of effectuating delivery, including for receipt of billing and usage data from the Utility. This Agreement shall be considered a Letter of Agency and constitutes the entire agreement between the Parties, superseding all verbal and written understandings. This Agreement shall only be amended in a writing signed by both Parties or with notice from Vendor to Customer as described above. Customer should contact the Utility in the event of an electric emergency at the following numbers: for ComEd residential customers, 1-800-Edison-1; for ComEd business customers, 1-877-4-ComEd-1. Future correspondence may be sent by Vendor to Customer via first class mail and/or electronic mail.

**ACCEPTANCE OF AGREEMENT:** This Agreement is hereby unconditionally accepted. Eligo Energy IL, LLC is authorized to switch Customer's utility supplier for the generation service charge. I will notify and/or cancel any previous agreement I may have in place with any other supplier, if applicable.

**Attachment C to Master Agreement**

**Plan of Operation and Governance Adopted by City**

# **Attachment D to Master Agreement**