



## Electricity Purchase and Sale Terms and Conditions

The Village of New Lenox ("Village"), pursuant to the aggregation authority conferred upon it by referendum, which passed by a majority of the vote on November 6, 2012 and Ordinance 2013-03, selected Constellation Energy Services, Inc. ("Seller") to supply the electric aggregation program (the "Program"). While Buyer's accounts were ineligible for the Program on an opt-out basis or chose not to participate in the Program, Buyer desires to enroll into the Program on an opt-in basis. Seller and Buyer (individually referred to as "Party" and collectively as "Parties") agree to the following Electricity Purchase and Sale Terms and Conditions ("Agreement"), as of the date agreed to by Buyer electronically if Buyer has agreed on Seller's website or telephonically if Buyer has agreed during the telephonic enrollment process (the "Effective Date"):

1. **Term:** This Agreement shall become binding on the Effective Date, provided however, the obligation of Seller to sell and schedule electricity for delivery to Buyer and the obligation of Buyer to purchase, take and pay for electricity is contingent upon: (a) successful enrollment by ComEd ("Utility") of the Utility accounts identified by Buyer electronically on Seller's website or telephonically during the telephonic enrollment process (the "Accounts"), (b) the Accounts being (i) in a residential rate class or small commercial (DS-2) rate class (so long as such small commercial Accounts consumes less than 15,000 kWh annually) and (ii) located within the Village, (b) successful enrollment by the Utility and (c) if applicable, the passage of the Rescission Period (defined in Section 2) without effective cancellation by Buyer. Successful enrollment by the Utility is dependent upon (i) the eligibility of the Accounts, as determined by the Utility, to take from a retail electric supplier and to participate in the Utility's purchase of receivables program (including service class and past payment history), (ii) Seller's determination, in its sole discretion, of price availability, and (iii) the accuracy and completeness of any information submitted by Buyer electronically on Seller's website or telephonically during the telephonic enrollment process. Service will commence on the first meter read date following successful enrollment by the Utility and shall remain in effect through the **June 2017** meter read ("Initial Term"), unless terminated pursuant to the terms of this Agreement.

2. **Rescission Period:** Unless Buyer is already a Program participant, Buyer may rescind the Agreement by contacting Seller before Seller submits the enrollment request to the Utility. Buyer may also rescind the Agreement and the pending enrollment within 10 days after the Utility processes the enrollment request by contacting (a) Seller or the Utility, if Buyer is a residential customer or (b) Seller, if Buyer is a small commercial customer.

3. **Price:**

a. **Fixed Rate:** For the Initial Term, Buyer shall pay the Fixed Rate multiplied by the billing cycle usage for Account(s) identified in the letter accompanying this Agreement. For the Initial Term, the Fixed Rate is **6.986¢ per kWh**. If at any time Seller experiences new, additional, or increased costs of performing hereunder that are beyond Seller's reasonable control, Seller may increase the Fixed Rate upon notice to Buyer. Notice may include without limitation a letter or postcard or invoice notation. Buyer may terminate without penalty within 30 days of receiving any such notice, provided however, Buyer will remain responsible for any unpaid amounts as of the termination date.

b. **Switching Fees:** While Seller does not charge Buyer a separate fee to switch to Seller's service, if Buyer is currently receiving electricity pursuant to an agreement with an alternative retail electric supplier, that supplier may charge Buyer for switching electricity providers. If the Utility charges a fee for enrolling the Account to Seller's service, Seller will reimburse Buyer for any such fees.

4. **Renewal:** 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"), Seller may send Buyer an offer for a Renewal Term. This offer will include, without limitation, the new Price, any applicable early termination fees, and the Renewal Term ("Offer"). In the event Seller does not receive Buyer's rejection of the Offer within **14** days, the Offer will be deemed accepted by Buyer without the need for further signature or other affirmative action by Buyer. If Buyer rejects the Offer in the manner directed in the Offer, Buyer's Accounts will be returned to Utility service at the end of the Current Term. If Seller does not submit an Offer to Buyer and instead indicates that the Agreement will be extended on a month to month basis at prevailing market rates, then the Agreement will be extended as set forth in the notice or terminated as directed by Buyer.

5. **Billing and Payment:** Buyer will be invoiced for Seller's charges and the Utility's delivery charges by the Utility on the invoice(s) Buyer receives from the Utility, and such billing and payment shall be subject to the applicable Utility rules regarding billing and payment procedures. Seller's charges or credits not invoiced through the Utility shall be invoiced or credited, respectively, directly by Seller. Seller may cause the Utility to correct previous invoices in the event of invoicing errors.

6. **Taxes:** Any tax levied against Seller by any governmental entity, exclusive of Seller's income tax or taxes levied on Seller's

real or personal property that must be paid by Seller shall be passed through to and borne and reimbursed by Buyer. Buyer must provide Seller with any applicable exemption certificates. Buyer shall pay any such taxes unless Seller is required by law to collect and remit such taxes, in which case Buyer shall reimburse Seller for all amounts so paid.

**7. Termination; Remedies:** In addition to any other termination rights provided for herein, if either Party defaults on its obligations under this Agreement (which may include Buyer's switching to another electric supplier or the Utility or Buyer's failure to pay the Utility), the other Party may terminate this Agreement, as applicable. Seller agrees not charge early termination fees.

**8. Limitations: ALL ELECTRICITY SOLD HEREUNDER IS PROVIDED "AS IS", AND SELLER 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 WILL 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 AND, FURTHER, IN NO CASE SHALL SELLER'S LIABILITY EXCEED THE AMOUNT OF BUYER'S SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING 12 MONTHS.**

**9. Force Majeure:** Except for Buyer's obligation to pay Seller timely, neither Party shall be liable to the other for failure to perform an obligation if the non-performing Party was prevented from performing due to an event beyond the 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 in the curtailment 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.

**10. Questions, Complaints and Concerns:** Buyer may contact Seller by calling **1-855-877-0700**, at Seller's website at **[www.integrysenergy.com](http://www.integrysenergy.com)**, or by writing to **20 N. Wacker Drive, Suite 2100, Chicago, IL 60606, Attn: Customer Service**. For issues concerning this Agreement, Seller will attempt to resolve the matter within five (5) business days after receiving the call or letter. If Buyer is not satisfied with the response, or to obtain consumer education materials, Buyer can contact the Illinois Commerce Commission's Consumer Services Division at 1-800-524-0795 or 1-800-858-9277 for TTY hearing-impaired customers or visit the Illinois Commerce Commission's website at **[www.icc.illinois.gov](http://www.icc.illinois.gov)**. Buyer may also contact the Illinois Attorney General's Office at 1-800-386-5438 (Northern Illinois), 1-800-243-0618 (Central Illinois), or 1-800-243-0607 (Southern Illinois).

**11. 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 Seller to Buyer at the delivery point, which shall be the Utility. Buyer appoints Seller as its agent for the purposes of effectuating delivery, including for receipt of billing and usage data (including interval data for non-billing purposes) from the Utility. Subject to regulatory approvals and notice from Seller, Seller may assign this Agreement without Buyer's consent. Buyer may assign this Agreement only with Seller's prior written consent. This Agreement (including without limitation the Accounts and other information identified by Buyer electronically on Seller's website and the Fixed Rate and Initial Term identified by Seller on Seller's website during the electronic or telephonic enrollment process) shall be considered a Letter of Agency and constitutes the entire agreement between the Parties, superseding all verbal and written understandings. There are no third party beneficiaries to this Agreement and none are intended. This Agreement shall only be amended in writing signed by both Parties or with Notice from Seller to Buyer as described under Section 4 above. Buyer should contact the Utility in the event of an electric emergency at 1-800-Edison-1 (residential) or 1-877-4-ComEd-1 (commercial). Future correspondence may be sent by Seller to Buyer via mail and/or electronic mail.