THIS MASTER SERVICES AGREEMENT (the “Agreement”) is entered into as of June 10, 2014 (“Effective Date”) between DIRECT ENERGY SERVICES, LLC (“DIRECT ENERGY”) and the VILLAGE OF MALTA, Illinois (“GA”) hereinafter referred to as “GA.” DIRECT ENERGY and GA are at times referred to individually as “Party” or collectively as “Parties.” Capitalized terms not defined in the Sections of this Agreement shall have the respective meanings ascribed to them in Exhibit A, hereto, “Definitions.”

WHEREAS, DIRECT ENERGY is certified by the Illinois Commerce Commission (“ICC”) as an Alternative Retail Electric Supplier (“ARES”) to sell retail electric power and other related services to consumers and governmental aggregation programs in the State of Illinois.

WHEREAS, the Parties desire to enter into certain transactions associated with DIRECT ENERGY’S provision of retail electric power and other related services (collectively, “Retail Electric Services”) necessary to serve the electric accounts of Aggregation Members within the electric service territory of the Local Utility in which GA’s Governmental Aggregation program is located.

WHEREAS, DIRECT ENERGY provides, among other things, Retail Electric Services to municipal corporations and county boards acting as Governmental Aggregators under authority conferred by, inter alia, Section 20 ILCS 3855/1-92.

WHEREAS, GA has adopted an ordinance (the “Aggregation Ordinance”) under which it may aggregate, in accordance with the Act, residential and small commercial retail electrical loads within the corporate limits of the GA for the purpose of soliciting and entering into service agreements to facilitate for those loads the sale and purchase of Retail Electric Supply (the “Aggregation Program”).

WHEREAS, GA duly adopted an ordinance to operate the Electrical 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.

WHEREAS, GA is pursuant to an ordinance authorized to enter into an agreement for Retail Electric Services.

WHEREAS, by this Agreement, DIRECT ENERGY desires to enter into a relationship with GA whereby DIRECT ENERGY shall provide the Retail Electric Services necessary to serve the Aggregation Members of GA’s Governmental Aggregation.
NOW, THEREFORE, the Parties, intending to be bound hereby and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1.
PROVISION OF SERVICE

1.1 Obligations and Duties

(a) Authority to Choose DIRECT ENERGY as Exclusive Provider. GA, as Governmental Aggregator, is or will be authorized to arrange from DIRECT ENERGY the Retail Electric Services for and on behalf of the Aggregation Members of the Aggregation Group pursuant to the terms of this Agreement and the Operation Plan set forth in Section 1.7 below herein. DIRECT ENERGY shall be the sole and exclusive provider of Retail Electric Services for those Aggregation Members of the Aggregation Group. GA shall not enter into any type of electric power supply arrangement with an ARES other than DIRECT ENERGY on behalf of its residents for the provision of Retail Electric Services during the Term of this Agreement. During the Term of this Agreement, GA shall not directly in a material way attempt to encourage or persuade Eligible Consumers to opt-out of the Aggregation Group or attempt to persuade Aggregation Members to discontinue their service with DIRECT ENERGY, other than notifying Eligible Consumers of their right to “opt-out.”

(b) Opt-Out Provisions. DIRECT ENERGY, with the reasonable cooperation of GA, will be responsible for administering the initial and ongoing “opt-out” procedures to Eligible Consumers. GA and DIRECT ENERGY shall cooperate in the developing, review, approval, printing, posting and issuance of all opt-out correspondence to assure that the initial opt-out notices with the agreed upon pricing, terms, and procedures can be sent out by DIRECT ENERGY to the Eligible Consumers at the earliest time practicable, but no later than 28 days before the applicable Local Utility enrollment submission deadline, unless the parties mutually consent in writing to a different date. DIRECT ENERGY shall send to Eligible Consumers an initial “opt-out mailer” by regular mail to afford such customers the opportunity to participate or not to participate in the Aggregation Program (the “Initial Opt-Out Notice”). The Parties contemplate that the Initial Opt-Out Notice will be sent at a time sufficient to enable enrollment of customers in the Governmental Aggregation program prior to the first month of electric power flows. DIRECT ENERGY may from time-to-time mutually agree with GA to conduct additional opt-out mailings during the Term of this Agreement. All communications with customers shall comply with applicable statutes, rules and regulations. If an Eligible Consumer in receipt of an Opt-Out Notice does not opt-out of the Governmental Aggregation program in accordance with the procedures set forth in the Opt-Out Notice, then that Eligible Consumer will become an Aggregation Member.

(c) New Accounts. DIRECT ENERGY shall facilitate the addition of new customer accounts to the Aggregation Program during the term of this Agreement. All new accounts shall be serviced at the same rate as is available to all Aggregation Members through the End Date. GA and DIRECT ENERGY shall cooperate in good faith to identify, on a mutually acceptable schedule (which shall in no event be more than once per calendar quarter) potential new customers, including potential customers who have established new electricity service through
the Local Utility in the Aggregation area during the preceding calendar quarter, and to inform such potential new customers of the availability of the Aggregation Program.

(d) **Re-Joining the Aggregation Group.** DIRECT ENERGY shall not be required to permit Aggregation Members that have Opted-Out to rejoin at a later date.

(e) **Administration and Assignment.** DIRECT ENERGY shall be responsible for the administration of the accounts of the Aggregation Members. DIRECT ENERGY will build and maintain a database of all Aggregation Members. The database will include the name, address and Local Utility account number for each Aggregation Member and may include other pertinent information as agreed upon by GA and DIRECT ENERGY. Subject to the requirements of Article 12 of this Agreement, to the extent applicable, upon reasonable request by GA, the database(s) will be provided by DIRECT ENERGY to GA no more than on a quarterly basis, and GA will have the right to access the information in the database(s) on a more frequent basis to the extent reasonably necessary for auditing purposes.

1.2 **Electric Power Supply.** DIRECT ENERGY shall make all arrangements necessary to provide sufficient electric power supply to the Delivery Point of the Local Utility, as defined in Section 1.3 hereof, to serve the requirements of the Aggregation Group. If DIRECT ENERGY has arranged for firm service for the delivery to the Delivery Point of the Local Utility, the Parties acknowledge that any failure or interruption after the Local Utility’s Delivery Point, including any failure or interruption in distribution service to the Aggregation Group, is solely the responsibility of the Local Utility and DIRECT ENERGY shall not be responsible for any such failure or interruption, including any losses or costs to GA or the Aggregation Group as the result of such interruption by the Local Utility.

1.3 **Delivery Point.** The “Delivery Point” for applicable Retail Electric Services supplied by DIRECT ENERGY to the Aggregation Group shall be the point of interconnection between the independent system operator’s transmission facilities and the transmission facilities of the Local Utility Company, or any interface with the Local Utility for direct redelivery to the Aggregation Group by the Local Utility.

1.4 **Responsibility for Delivery Costs.** DIRECT ENERGY will be responsible for obtaining or providing firm transmission service up to the Delivery Point, and shall be responsible for all costs, liabilities, taxes, losses and charges of any kind incurred associated with delivering electric power to the Delivery Point. It is the Parties’ understanding that after the electric power is delivered to the Delivery Point, the Local Utility shall provide the electric distribution service from the Delivery Point to the Point of Sale, and the Aggregation Members shall be responsible for the costs of the distribution service provided by the Local Utility. Responsibility for all costs, liabilities, taxes, losses and charges of any kind after the Delivery Point is governed by the Local Utility’s distribution tariff.

1.5 **No Financial Responsibility.** GA as Governmental Aggregator has no financial responsibility whatsoever.

1.6 **Other Assistance.** DIRECT ENERGY will endeavor to assist GA with other matters as mutually agreed to by the parties.
1.7 **Plan of Operation and Governance.** GA shall have adopted an ordinance as required by Section 20 ILCS 3855/1-92(a), developed a plan of Operation and Governance ("Operation Plan") as required by Section 20 ILCS 3855/1-92(b), and provide a copy of each to DIRECT ENERGY. GA shall comply with all material terms of the Operation Plan, which Operation Plan shall comply with the requirements 20 ILCS 3855/1-92(b), and all rules and regulations as may be applicable. GA may not amend or revise the Operation Plan during the Term to affect DIRECT ENERGY’S obligations under this Agreement, except with DIRECT ENERGY’S prior written consent.

1.8 **Press, Media and Consumer Communications.** The Parties agree to joint review and approval prior to issuance of all media press releases and mass communications (e.g., direct mailing or social media campaigns and radio and televisions ads) to, and the development of websites directed at, Eligible Consumers and Aggregation Members regarding this Agreement and the Aggregation Program (collectively, “Mass Consumer Communication”). Approval of Mass Consumer Communications by either Party will not be unreasonably withheld or delayed.

**ARTICLE 2.**

**CUSTOMER & USAGE INFORMATION**

2.1 **Customer Information.** GA shall, with the assistance of the DIRECT ENERGY, pursuant to the applicable law and the Local Utility’s Tariff Rate GAP, obtain the Customer Information from the Local Utility.

2.2 **Notices and Customer Information from Local Utility.** GA shall promptly forward to DIRECT ENERGY the Customer Information received from the Local Utility and each Party will promptly provide to the other Party any notices received by that Party from the Local Utility concerning the accounts of Eligible Customers or Aggregation Members.

2.3 **Submittals to Local Utility.** GA shall, with the assistance of DIRECT ENERGY, submit to the Local Utility (a) all forms required by the Local Utility’s Tariff Rate GAP, including warrants that GA is properly authorized to operate the program and that it will maintain the confidentiality of Customer Information and use such information only for purposes of this Aggregation program," (b) a list of Eligible Customers who are not Aggregation Members because they have elected to opt out of the Aggregation program, and (c) a list of all Aggregation Members.

2.4 **Direct Mail, Moves and Default.** Aggregation Members that move from one location to another within GA’s boundary, and who notify DIRECT ENERGY of such move and any new account number in a timely manner, will retain their participant status at their then-existing price. If the consumer moves out of GA’s corporate limits, all obligations, except for the consumer’s obligation to pay all amounts owed, shall cease as between that consumer, DIRECT ENERGY, and GA, effective with the consumer’s termination of service with the Local Utility relative to its participation in the Governmental Aggregation. Consumers that opt-out of or otherwise leave the Aggregation Group will default to the appropriate Local Utility’s standard service offer or other appropriate service.
ARTICLE 3. 
OPERATIONS

3.1 **Scheduling.** DIRECT ENERGY, either directly or through its designee, shall perform any and all scheduling necessary to provide service to the Aggregation Group. DIRECT ENERGY shall be responsible for all scheduling for delivery to the Aggregation Members, except to the extent such scheduling is handled by the Local Utility during the ordinary course of its provision of local distribution services.

3.2 **Metering.** Metering shall continue to be done by the Local Utility or other entity approved by the ICC.

3.3 **Start Date.** The Start Date for the electricity flows contemplated under this Agreement will begin from the first appropriate meter-read date in the month of August 2014, for those Eligible Consumers who become Aggregation Members pursuant to Section 1.1(b). This Start Date is subject to DIRECT ENERGY being timely provided the list of Eligible Consumers located within GA’s boundaries and any enrollment data necessary for customer enrollment. For avoidance of doubt, this Agreement shall not be applicable to those electricity flows that occurred prior to the meter-read date in the month of August 2014.

3.4 **End Date.** Upon the conclusion or termination of this Agreement, the end date for service to each Aggregation Member shall be the next immediate metering date after the effective date of such conclusion or termination, subject to the Local Utility’s procedures (“End Date”). Upon the conclusion of the opt-out term between each Aggregation Member and DIRECT ENERGY, the End Date for service for the Aggregation Member shall be pursuant to the opt-out procedures and consistent with the local utility’s procedures.

ARTICLE 4. 
PRICES AND FEES

4.1 **Price.** The price for non-renewable Retail Electric Services for the electricity flows contemplated under this Agreement will be **$0.072 per kilowatt hour** (“Non-Renewable Fixed Commodity Price”). To the extent a customer chooses renewable Retail Electric Services, the price for electricity flows contemplated under this Agreement will be **$0.0745 per kilowatt hour** (“Renewable Energy Fixed Commodity Price”; and together Non-Renewable Fixed Commodity Price, the “Price”). The Price does not include utility distribution charges or applicable taxes. Both Parties recognize that components of the Price 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 increase in these charges subsequent to the execution of this Confirmation may be directly passed through to Aggregation Members by a corresponding increase in the Fixed Rate.

4.2 **Switching Fee Reimbursement.** GA shall not be responsible for the payment of any consumer-switching fee or other fees imposed by the Local Utility as a result of the transfer of consumers to DIRECT ENERGY Retail Electric Services. Upon termination of this Agreement,
DIRECT ENERGY shall not be responsible for the payment of any consumer-switching fee associated with the return of a customer to the Local Utility.

4.3 Early Termination Fee. Customers that join the Aggregation Group and then leave during the term of this service period will not be charged an early termination fee by DIRECT ENERGY.

ARTICLE 5.
BILLING

5.1 Billing. The Parties understand that the Local Utility will provide consolidated billing for the services provided hereunder. Notwithstanding the foregoing, if offered by the Local Utility in the future, DIRECT ENERGY may at its sole option provide consolidated billing to Aggregation Members. Under no circumstances will a dual billing option be offered absent GA’s consent; provided, however, that such option may be offered by DIRECT ENERGY without GA's prior consent, but only if the Local Utility no longer offers consolidated billing.

ARTICLE 6.
CONTINGENCIES AND FORCE MAJEURE

6.1 Contingencies.

(a) Regulatory Events. The following events constitute a “Regulatory Event” hereunder:

(i) Illegality. Due or in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this Agreement.

(ii) Adverse Government Action. (A) Any regulatory agency or court having jurisdiction over the Agreement requires a material change to the terms of this Agreement that materially and adversely affects a Party’s ability to perform hereunder or otherwise provide the Retail Electric Services, or (B) Regulations or court action adversely and materially impacts a Party’s ability to perform hereunder or otherwise provide the Retail Electric Services.

(b) Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event, the adversely affected Party shall within ten (10) days give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree to in writing, each Party will enter into good faith negotiations with the other Party to amend or replace this Agreement. In the case of a Regulatory Event, the Parties shall attempt to amend this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. In either case, if the Parties are unable, within thirty (30) days of initiating negotiations or such
other period as the Parties may agree to in writing, to agree upon an amendment to the
Agreement, the adversely affected Party shall have the right, upon subsequent additional thirty
(30) days prior written notice, to terminate and close out its obligations under the Agreement
pursuant to the terms of Section 9.1 hereof.

(c) Action by GA. During the term of this Agreement, GA shall take all reasonable
steps to ensure that any changes to laws, rules, regulations, ordinances or otherwise sought or
implemented by GA during the term of this Agreement do not cause the occurrence of a
Regulatory Event under this Agreement.

6.2 Force Majeure.

(a) 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 from a Force Majeure
event. In the event that either Party is unable, wholly or in part, to meet its obligations under this
Agreement due to conditions of a Force Majeure event, the obligations of each Party, so far as
they are affected by such Force Majeure, shall be suspended during the period of Force Majeure.

(b) In the event any Party hereto is rendered unable, wholly or in part, by Force
Majeure to carry out its obligations hereunder, it is agreed that upon such Party's (the “Claiming
Party”) giving notice and full particulars of such Force Majeure within three (3) business days
after becoming aware of the cause relied upon, such notice to be confirmed in writing to the
other Party, then the obligations of the Claiming Party shall, other than the obligation to make
payments due hereunder, and only to the extent they are affected by such Force Majeure, be
suspended during the continuance of said inability but for no longer period. The Party receiving
such notice of Force Majeure shall have until the end of the third (3rd) Business Day following
such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of
Force Majeure.

(c) The Claiming Party affected by an event of Force Majeure shall use due diligence
to fulfill its obligations hereunder and to remove any disability caused by such event at the
earliest practicable time. Nothing contained in this section shall be construed as requiring a Party
to settle any strike or labor dispute in which it may be involved or make a capital expenditure to
cure an event of Force Majeure.

ARTICLE 7.
TERM

7.1 Term. The term of this Agreement shall commence on the Effective Date hereof and
terminate with the August 2017 meter readings (“Term”).

ARTICLE 8.
REPRESENTATIONS AND WARRANTIES

8.1 Mutual Representations and Warranties. Each Party represents and warrants to the other
Party, as of the Effective Date of this Agreement, that:
(a) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing;

(b) It has the corporate, governmental and/or other legal capacity, authority and power to execute and deliver this Agreement and any other document relating hereto to which it is a Party, and to perform its obligations under this Agreement and any other document relating hereto to which it is a Party, and has taken all necessary action to authorize such execution, delivery and performance;

(c) The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, the Operation Plan, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(d) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Agreement or any other document relating hereto to which it is a Party have been obtained or submitted and are in full force and effect, and it has complied with all conditions and terms of any such authorizations, approvals, consents, notices and filings;

(e) Its obligations under this Agreement and any other document relating hereto to which it is a Party are legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law);

(f) No Bankruptcy Event has occurred and is continuing, and that a Bankruptcy Event would neither occur as a result of its entering into or performing its obligations under this Agreement or any other document relating hereto to which it is a Party nor is presently or otherwise threatened;

(g) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any other document relating hereto to which it is a Party or its ability to perform its obligations under this Agreement or such document;

(h) It has entered into this Agreement with a full understanding of the material terms and risks of transaction contemplated hereunder, and it is capable of assuming those risks;

(i) The other Party is not acting as a fiduciary or in an advisory capacity to the other Party; and
(j) All applicable information that is furnished in writing by or on behalf of it to the other Party is and will be, as of the date of the information, true, accurate and complete in every material respect.

8.2 Additional Representations of GA. Relative to this Agreement, GA further represents to DIRECT ENERGY, as of the Effective Date, that:

(a) GA’s execution and delivery of this Agreement and its performance of its obligations hereunder, are in furtherance, and not in violation, of the purposes for which GA is organized pursuant to its authorizing statutes and regulations.

(b) This Agreement does not constitute any kind of investment by GA that is proscribed by any constitution, charter, law, rule, regulation, government code, constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which GA (or any of its officials in their respective capacities as such) or its property is subject.

(c) All acts necessary to the valid execution, delivery and performance of this Agreement including, without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or will be taken and performed as required under the Act, Regulations and GA’s ordinances, bylaws, policies or other regulations.

(d) GA will not represent to consumers that the Retail Electric Services will result in monthly or annual savings when compared to the Local Utility standard service without also acknowledging that over time energy prices fluctuate so savings levels are not guaranteed in the long term, it being expressly understood that while the Price offered by DIRECT ENERGY may be less than such Local Utility price as of the date of this Agreement, there is no assurance that the Price will remain so in the future;

(e) If GA has been referred to Direct Energy by an agent, broker or consultant, such agent, broker or consultant has disclosed to GA, prior to GA’s execution of this Agreement, whether such agent, broker or consultant will be receiving compensation from Direct Energy and, if any, the total anticipated remuneration to be paid to such agent, broker, or consultant over the period of this Agreement.

8.3 Limitation of Warranties. THE ONLY REPRESENTATIONS AND WARRANTIES MADE BY THE PARTIES ARE SET FORTH IN THIS ARTICLE EIGHT. ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED BY THE PARTIES.

ARTICLE 9.
DEFAULT AND EARLY TERMINATION
9.1 Default. If either Party fails to comply with any material term or condition of this Agreement and such failure is not excused as Force Majeure, such Party shall be in default under this Agreement. If a Party is in default under this Agreement, the Party claiming that the other Party is in default shall give notice to the defaulting Party in writing detailing the alleged default and requesting specific relief that is in accord with the terms and conditions of this Agreement. The Party receiving such notice of default shall respond in writing within five (5) business days affirming or denying the alleged default and detailing how any such default under this Agreement will be cured. If the Party claiming the default is not reasonably satisfied that such default has been cured within thirty (30) days following the date that the notice of default has been received by the defaulting Party, the claiming Party shall be free to seek legal redress and take such other actions, including termination of this Agreement, as it sees fit.

9.2 Enforcement of Remedies. The Party claiming default under Section 9.1 above may enforce any of its remedies under this Agreement successively or concurrently at its option. All of the remedies and other provisions of this Article shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, lien or other right to which any Party or any of its Affiliates is at any time otherwise entitled (whether by operation of law or in equity, under contract or otherwise).

ARTICLE 10.
LIABILITY/LIMITATION OF LIABILITY

10.1 GA Indemnification. GA shall protect, defend, indemnify and hold harmless Direct Energy and its affiliates, and their respective owners, officers, directors, agents and employees (each, a "Direct Energy Indemnitee" or collectively "Direct Energy Indemnitees") from and against any liability, claims, proceedings, losses, liabilities, damages, fines, judgments, demands, awards, settlements, costs and expenses of any nature (including taxes) and all related costs and expenses (including any and all reasonable legal fees, court awarded costs and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) ("Claims") that may be suffered or incurred by or asserted against any of the Direct Energy Indemnitees as a result of: (a) any material misrepresentations by GA regarding the Aggregation Program, the Retail Energy Services, the Price or this Agreement, including without limiting the foregoing, any material misrepresentations by GA regarding this Agreement or the Aggregation Program; and/or (b) any regulatory actions, complaints or alleged violation of any law, rule or regulation by GA ("Law"), except to the extent any event set forth in any of subsections (a) or (b) resulted from, or is caused by, the sole, joint, concurrent, contributing or comparative negligence or fault of the Direct Energy or any Direct Energy Indemnitee.

10.2 Defense of Claims. If a third party claim is made or threatened against Direct Energy in respect of a Claim for which GA owes an indemnity obligation pursuant to Section 10.1, and if Direct Energy intends to seek indemnity with respect thereto, Direct Energy shall notify GA of such claim (each, a "Subject Claim"). The failure by Direct Energy to give such notice will not relieve GA of its obligations under Section 10.1, except to the extent that such failure prejudices the ability of GA to defend such claim. GA shall have, at Direct Energy’s option, the obligation to assume at its sole expense the defense of such Claims; provided that Direct Energy shall have the right to participate in such defense with counsel of Direct Energy’s choosing at Direct
Energy's expense, and GA shall not be permitted to settle any such claim in a manner that creates obligations on Direct Energy without the written approval of Direct Energy. GA shall not consent to the entry of any judgment that does not include as an unconditional term thereof the requirement that the claimant deliver to Direct Energy a signed release of the Direct Energy from all liability in respect of the relevant claim.

10.3 Direct Energy Indemnification. Direct Energy shall protect, defend, indemnify and hold harmless GA and its employees (each a "GA Indemnitee", or collectively, the "GA Indemnitees") from and against any material Claims that may be suffered or incurred by or asserted against any of the GA Indemnitees as a result of: (a) any material misrepresentations, or alleged illegal or fraudulent marketing practices, by Direct Energy; (b) any material regulatory actions, complaints or alleged material violation of Laws by Direct Energy, except to the extent any event set forth in any of subsections (a) or (b) resulted from, or is caused by, the sole, joint, concurrent, contributing or comparative negligence or fault of the GA or any GA Indemnitee, and/or (c) a breach by Direct Energy of any material term of a sales agreement between any Consumer within the GA and Direct Energy.

10.4 Defense of Claims. If a third party claim is made or threatened against GA in respect of a Claim for which Direct Energy owes an indemnity obligation pursuant to Section 10.3, and if GA intends to seek indemnity with respect thereto, GA shall notify Direct Energy of such claim. The failure by GA to give such notice will not relieve Direct Energy of its obligations under Section 10.3, except to the extent that such failure materially prejudices the ability of Direct Energy to defend such Claim. Direct Energy shall have, at GA’s option, the obligation to assume at its sole expense the defense of such Claims; provided that GA shall have the right to participate in such defense with counsel of its choosing at GA’s expense, and Direct Energy shall not be permitted to settle any such claim in a manner that creates obligations on the GA without the written approval of GA. Direct Energy shall not consent to the entry of any judgment that does not include as an unconditional term thereof the requirement that the claimant deliver to GA a signed release of GA from all liability in respect of the relevant claim.

10.5 Liability for Fees. Neither Party shall be entitled to any fees from the other Party for any services rendered under this Agreement, and neither Party shall be required to incur any expenses or costs related to this Agreement except as expressly provided in this Agreement.

10.6 Limitation of Liability. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER PARTY, NOR ITS RESPECTIVE REPRESENTATIVES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION, UNDER ANY THEORY OF RECOVERY, FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE OR THE LOSS OF USE OF EITHER, COSTS OF REPLACEMENT ENERGY SERVICES OR OF CAPITAL, OR CLAIMS OF CUSTOMERS OF THE OTHER PARTY RELATING TO LOSS OF ANY ENERGY SERVICES TO ANY CONSUMER. THE PROVISIONS OF THIS SECTION 10.6 SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO PAY
ANY CLAIM UNDER THIS AGREEMENT IN AGGREGATE AMOUNT IN EXCESS OF FIFTY THOUSAND DOLLARS ($50,000) INCLUDING FOR ANY INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT.

ARTICLE 11.
NOTICES

11.1 Unless otherwise specified, all notices, demands, requests, consents, statements, payments or other communications under this Agreement shall be made to the following:

If to DIRECT ENERGY: Direct Energy Services, LLC
12 Greenway Plaza, Suite 250
Houston, TX 77046
Attn: Vice President & General Manager – US Commercial Direct Energy Residential

With a Copy to: Direct Energy Services, LLC
12 Greenway Plaza, Suite 250
Houston, TX 77046
Attn: Principal Legal Counsel
Direct Energy Residential

If to GA: VILLAGE OF MALTA
PO Box 53
MALTA, IL 60150
Attn: VILLAGE OF MALTA Clerk

With a Copy to: Progressive Energy Group
2112 W Galena Blvd. Suite 8210
Aurora, IL 60506
Attn: Arnold Schramel
Foster & Buick Law Group
2040 Aberdeen Court
Sycamore, IL 60178
Attn: Kevin Buick

11.2 Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, or overnight courier service. Notice by hand delivery shall be deemed effective at the close of business on the day actually received, if received during business hours on a business day, and otherwise shall be effective at the close of business on the next business day following receipt. Notice by overnight United States mail or courier shall be deemed effective two (2) business days after the day on which sent by such overnight United States or courier service. Notice sent by regular US mail shall be effective five (5) business days following the day on which it was deposited in the United States certified or registered mail,
postage prepaid, return receipt requested, and addressed to the intended recipient at its address set forth in this Agreement. A Party may change its addresses or the contact person for purposes of this Article 11 by providing written notice of same in accordance herewith.

ARTICLE 12. CONFIDENTIALITY

12.1 Obligation of Confidentiality. The Parties agree for themselves and their respective Representatives to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes related to this Agreement. Except as provided herein, Confidential Information shall not be disclosed by the receiving Party ("Receiving Party") to any third party without the prior written consent of the disclosing Party ("Disclosing Party"), and such third party shall be requested to treat the Confidential Information in accordance with this Agreement.

12.2 Disclosure. In the event Receiving Party is required to disclose such Confidential Information by a law, court, agency or other governing body having, or purporting to have, jurisdiction over the Party, or, if not subject to a relevant exception, the Illinois Freedom of Information Act, the Receiving Party shall timely notify the Disclosing Party prior to any disclosure, if such notice is, in the determination of the Receiving Party’s counsel, permitted by law, so as to allow the other Party an opportunity to resist such disclosure and/or to seek appropriate protection from further disclosure. If the Receiving Party, in the determination of counsel, is compelled to disclose Confidential Information, the Receiving Party may disclose only that portion of the Confidential Information which the Receiving Party’s counsel advises that the Receiving Party is compelled to disclose.

12.3 Limitations on Customer Information. Both Parties acknowledge and agree that the Customer Information is subject to, and must be maintained in compliance with, the limitations on disclosure of the Customer Information established by law, including without limitation 20 ILCS 3855/1-92, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-102, Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH, the ICC’s Order in Case No. 11-0434 issue April 4, 2012, and the provisions of the Local Utility’s Tariff Rate GAP. GA shall warrant to the Local Utility that customer-specific information provided to the GA in accordance with the provisions of the Local Utility’s Tariff Rate GAP shall be treated as confidential. To protect the confidentiality of Customer Information:

12.3.1 DIRECT ENERGY’S access to Customer Information is limited those authorized representatives of DIRECT ENERGY, or any third party, who have a need to know the information for purposes of this Agreement.

12.3.2 DIRECT ENERGY warrants that it will not disclose, use, sell, or provide Customer Information to any person, firm or entity for any purpose outside of the aggregation program.

12.3.3 DIRECT ENERGY and GA acknowledge that Customer Information remains the property of GA. Within ten (10) business days of GA providing DIRECT ENERGY of notice of a breach of confidentiality of Customer Information, DIRECT ENERGY shall investigate the nature and cause of the breach, and provide GA a detailed report thereof,
12.3.4 DIRECT ENERGY warrants that it will delete and/or destroy the Customer Information described in Items 18 through 23 of the Company Obligations Section of The Local Utility’s Tariff Rate GAP, and provided by GA, within 60 days after the Local Utility provides the information to GA. GA will offer its assistance to ensure that DIRECT ENERGY meets these requirements and deadlines.

12.4 Proprietary Rights. Survival. Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information. The obligations under this Article Twelve shall survive the conclusion or termination of this Agreement for two (2) years.

ARTICLE 13.
GENERAL TERMS

13.1 Entire Agreement. Amendments and Counterparts. The terms of this Agreement (including any exhibits, schedules and attachments hereto) constitute the entire agreement between the parties with respect to the matters set forth in this Agreement. This Agreement merges and supersedes all prior understandings and representations (both oral and written) between the Parties, and each Party releases the other from all claims arising in connection with any such prior agreement. This Agreement may be changed only by written agreement executed after the date hereof by the Parties. All exhibits, schedules and addendums attached hereto are incorporated herein by reference.

13.2 No Waiver. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any partial exercise of any such right preclude the full exercise of that right or the exercise of any other right. No waiver shall be valid unless set forth in a mutually signed writing, and any such waiver shall not operate as a waiver of the same or any other right on another occasion, unless otherwise agreed to mutually in writing.

13.3 Headings. The headings used for the articles and sections herein are for convenience only and shall not affect the meaning or interpretation of the provisions of this Agreement.

13.4 No Partnership. Nothing in this Agreement shall constitute or be construed as constituting or tending to create an agency, partnership, fiduciary relationship, or master-servant or employer-employee relationship between the Parties.

13.5 Governing Law. This Agreement shall be governed by and construed in accordance with and subject to the internal substantive laws of the State of Illinois, without giving effect to any choice of law rules or principles which may direct the application of the laws of any other jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of the DeKalb County Circuit Court, 23rd Judicial Circuit, 133 W. State Street, Sycamore, IL 6017 or, if that court does not have or take jurisdiction to the U.S. District Court with jurisdiction over the
VILLAGE OF MALTA, Illinois, for the purpose of any suit, action or other proceeding arising out of this Agreement or the interpretation, performance or enforcement hereof, and the parties agree that venue for any such suit, action or proceeding shall lie exclusively in such courts.

13.6 Jury Trial Waiver. Both Parties waive any right to trial by jury in any action arising hereunder.

13.7 No Third Party Beneficiaries. This Agreement confers no rights or remedies whatsoever upon any person or entity other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person or entity not a party hereto. Neither Party shall be liable to a third party not a party to this Agreement for any unauthorized act or omission on the part of the other Party, nor for any unauthorized obligation or debt incurred by the other Party.

13.8 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns, except as expressly provided in this Agreement.

13.9 Assignment. This Agreement shall not be assigned by either Party without the written consent of the other, which consent shall not be unreasonably withheld; provided, however, that DIRECT ENERGY or its successor in interest may assign this Agreement, without the consent of GA, to an Affiliate or any other company which shall succeed it by purchase, merger, consolidation, or other transfer of substantially all of DIRECT ENERGY'S assets or DIRECT ENERGY’S Illinois retail electric assets. The Agreement shall be binding upon, inure to the benefit of, and be enforceable against the respective successors and assigns of the Parties to this Agreement.

13.10 Authorization. Each Party to this Agreement represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants that he or she has full and complete authority to do so and that such Party will be bound by the Agreement.

13.11 Prefatory Statements. The Parties hereto agree and acknowledge that the prefatory statements in this Agreement are intended to be and shall be a part of the provisions of this Agreement.

13.12 Severability. If any provision of this Agreement is determined to be invalid, void, or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

13.13 Agent. GA may designate an agent or Representative to act on its behalf, which agent or Representative GA may change from time-to-time upon written notice to DIRECT ENERGY.

13.14 Waiver of Conflict of Interest. If GA has been referred to Direct Energy by an agent, broker or consultant, and such agent, broker or consultant will be receiving compensation from Direct Energy, it could be construed that such agent, broker, or consultant possesses a conflict of
interest in representing GA. If GA has any concerns or questions regarding an actual or potential conflict of interest, GA should discuss the issue with such agent, broker, or consultant. **BY ENTERING INTO THIS AGREEMENT, GA ACKNOWLEDGES AND WAIVES ANY ACTUAL OR POTENTIAL CONFLICT OF INTEREST.**

**ADDITIONAL OBLIGATIONS**

**ARTICLE 14.**

14.1 Direct Energy agrees that during the Term of this Agreement, GA may issue solicitations and may enter into negotiations with other power suppliers (which may include but is not limited solely to Direct Energy) in order to arrange for new power supply to be available at the end of the term of this Agreement and to arrange for a seamless transition for GA residents between suppliers at the end of the Term of this Agreement. Direct Energy further agrees to cooperate with GA and any new supplier in a timely manner to help facilitate such a transition. This cooperation shall include but not be limited to the provision by Direct Energy of a list of customers who, according to Direct Energy’s records, are participating in the aggregation program at the time any such request is made.

14.2 Direct Energy agrees to provide on a monthly basis to GA or GA’s designated consultant the customer counts and consumption information for all GA Aggregation Members.

[Signatures on following page.]
Execution of Master Services Agreement

By their respective signatures below, the Parties hereby acknowledge their agreement to this Master Services Agreement as of the Effective Date. The Parties agree that signatures transmitted on this Agreement may be delivered via facsimile or email/pdf, it being the express intent of the Parties that such Agreement delivered via facsimile or email/pdf shall have the same force and effect as if it were an original.

VILLAGE OF MALTA, Illinois

By: Vince McCabe
Name: Vince McCabe
Title: Village President
Date: 06/10/2014

Direct Energy Services, LLC

By: 
Name: 
Title: 
Date: 

Definitions

"Act" means the Public Utilities Act (220 ILCS 5/), the Electric Supplier Act (220 ILCS 30/) and the Illinois Power Agency Act (20 ILCS 385/).

"Affiliate" means, in relation to any person, any entity controlled, directly or indirectly, by such person, any entity that controls, directly or indirectly, such person, or any entity directly or indirectly under common control with such person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person. With respect to GA, the term Affiliate shall include but not be limited to any political subdivision of GA, or an instrumentality agency or department of GA.

"Aggregation Group" means the collection of Aggregation Members.

"Aggregation Member(s)" means those retail residential and small commercial customers whose meters are read on a cycle basis by the Local Utility, are within the corporate limits of GA, and who are eligible to and do become members of GA's Governmental Aggregation program.

"Bankruptcy Event" means either Party:

(i) is dissolved (other than pursuant to a consolidation, amalgamation or merger), becomes insolvent, is unable to pay its debts or admits in writing its inability generally to pay its debts as they become due, or makes a general assignment, arrangement or composition with or for the benefit of its creditors;

(ii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation;

(iii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or substantially all its assets, or has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;

(iv) in the case of GA, there is appointed or designated any entity such as a board, commission, authority or agency to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress;

(v) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (iv) inclusive; or
(vi) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“ICC” means the Illinois Commerce Commission.

“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 “Receiving Party”) regarding itself, its business, and/or the business of its Affiliates, and, if disclosed in writing, is clearly and conspicuously designated in writing or other tangible form as “confidential” or, if disclosed verbally, is described as confidential or proprietary at the time of the conversation and the Disclosing Party also supplements the verbal transmittal with a transmittal in writing or other tangible form that is conspicuously marked “confidential” or “proprietary” within five (5) days of the verbal disclosure. Each Party shall have the right to correct any inadvertent failure to designate information as Confidential Information by providing the other Party with timely written notification of the error, and the designated information shall be treated as Confidential Information from the time a Party receives the written notification. Confidential Information does not include information: (a) in the public domain at the time of disclosure; (b) which after disclosure passes into the public domain, except by a wrongful act of the Receiving Party; (c) disclosed to the Receiving Party by a third party not under an obligation of confidentiality; (d) already in the Receiving Party’s possession prior to disclosure by the Disclosing Party; or (e) subject to disclosure by law as a public record subject to public disclosure; provided, however, that in the event the Receiving Party believes disclosure is required under applicable law, it shall only disclose such information in accordance with Section 12.2 of the Agreement.

“Customer Information” means that certain information that the Local Utility is required to provide to the municipal corporate authorities of GA pursuant to Section 20 ILCS 3855/1-92 and its Tariff Rate GAP, including without limitation those names and addresses and Electric Utility account numbers of residential and small commercial retail customers in the Aggregation area that are reflected in the Local Utility's records at the time of the request.

“Eligible Consumers” mean those retail residential and commercial consumers within the geographic boundaries of GA and within the service territory of the Local Utility that are eligible to participate in a Governmental Aggregation program.

“Force Majeure” for purposes of this Agreement means an event that (a) is not within the reasonable control of the Party relying thereon and (b) could not have been prevented or avoided by such Party through the exercise of due diligence. Subject to the foregoing, Force Majeure shall include flood, earthquake, storm, drought, fire, pestilence, lightning, hurricanes, washouts, landslides and other natural catastrophes and acts of God; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbance or disobedience, sabotage, terrorist acts, wars or blockades; governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority; or any other unplanned or non-scheduled occurrence, condition, situation or threat not covered above, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control through the exercise
of due diligence of the Party claiming such inability. A change in economic electric power or 
other market conditions or economic hardship unrelated to an uncontrollable force shall not 
constitute a Force Majeure event. In no event shall a Regulatory Event sought or implemented 
by GA serve as the basis for a declaration of an event of Force Majeure by GA.

“Governmental Aggregator” means an eligible governmental entity meeting the requirements 
of 20 ILCS 3855/1-92.

“Governmental Aggregation” means a program organized and operated under authority 
conferred by, inter alia, 20 ILCS 3855/1-92.

“Historical Load” means the most recent history of electricity consumption for the Aggregation 
Group and/or Aggregation Member(s).

“Local Utility” means Commonwealth Edison, i.e., the electric distribution utility providing 
services to the Aggregation Group of the Governmental Aggregation program.

“Local Utility Charges” means all fees, taxes and any other charges for electric service imposed 
by the Local Utility, or any other federal, state or local governmental authority or other entity, at 
any time from time-to-time, with the sole exception of the electric generation service charge (i.e., 
the charge for Retail Electric Services) and the by-passable federally-mandated congestion 
charge.

“Point of Sale” means the electric meter(s) for each Aggregation Member’s account, as 
designated by the Local Utility Company.

“Opt-out Period” means the period of twenty-one (21) calendar days from the post-mark date of 
the Opt-out Notice.

“Regulations” means ICC, Illinois Power Agency and Federal Energy Regulatory Commission 
(and any successor agencies thereof) rules, regulations and precedent, to the extent of their 
respective jurisdictions.

“Representative” means a Party, any Affiliate, or any shareholder, officer, director, employee, 
agent, attorney, or advisor of the Party or its Affiliate. Each Party agrees to take reasonable steps 
to keep the other Party informed of the identity and contact information for each of its 
Representatives.