Constellation

Master Broker Agreement

M&L Service Providers LLC d/b/a Diamond Energy, a Energy ("**Broker**"), and Constellation NewEnergy, Inc., ("NewEnergy"), Constellation Energy Services, Inc., Constellation Energy Services of New York, Inc. (together Constellation Energy Services, Inc. and Constellation Energy Services of New York, Inc. referred to as "CES") (together NewEnergy and CES are collectively referred to herein as "**Constellation**"), enter into this Master Broker Agreement (the "**Master Broker Agreement**") as of the later date set forth under the Parties' signatures below (the "**Effective Date**"). Constellation and Broker are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**." This Master Broker Agreement sets forth the framework for Broker to receive proposals, including, pricing and product information from Constellation, on behalf of prospective customers. Any fee to be dispersed by Constellation to Broker shall be governed by, and contingent upon the Parties execution of, a separate fee schedule in the general form attached as Schedule A, or similar such notification or documentation of disbursement by Constellation to Broker as provided for in an addendum or rider to this Agreement (a "**Compensation Schedule**"). Each Compensation Schedule or addendum or rider, if any, shall set forth certain commercial and other terms for the brokerage of electricity transactions in a designated geographic region and/or for a particular customer or customers, and following execution and delivery by both Parties, shall become effective and be subject to this Master Broker Agreement. The executed Compensation Schedule(s), if any, along with this Master Broker Agreement are sometimes collectively referred to herein as the "**Agreement**".

Broker understands and agrees it is entering into this Agreement with various Constellation entities. Regardless of the Constellation entity that executes this Agreement, a default by one Constellation entity will not affect the transaction terms entered into by a separate Constellation entity under this Agreement. In the event of a default by a Constellation entity, Contractor may seek damages or performance as may be permitted under this Agreement with respect to such default only from the defaulting Constellation entity. Broker shall not hold, nor attempt to hold, any Constellation entities (including Affiliates) liable for the acts, omissions, or breaches of any other Constellation entity. For purposes of determining the rights and obligations of each Party hereunder, Broker and each Constellation entity shall be considered to have entered into an Agreement separate and apart from an Agreement between Broker and any other Constellation entity.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINED TERMS**. Capitalized terms not otherwise defined in this Master Broker Agreement will have the meanings set forth below or in the Compensation Schedule(s).

"**Affiliate**" of a Party means any person or entity controlled by, that controls, or that is under common control with, such Party. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Party, whether through the ownership of voting securities, by contract, or otherwise.

"**Confidential Information**" means all information or material not generally known by non-Constellation (including its Affiliates) personnel (a) which gives Constellation some competitive business advantage or the opportunity of obtaining such advantage, or the disclosure of which could be detrimental to the interests of Constellation; (b) which is owned, controlled or developed by Constellation or in which Constellation has an interest; and (c) which is (i) marked "Confidential Information," "Proprietary Information" or other similar marking, (ii) known by Broker to be considered confidential and proprietary by Constellation, or (iii) from all the relevant circumstances should reasonably be assumed by Broker to be confidential and proprietary to Constellation. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): Prospect Data, the terms of this Master Broker Agreement and any related Compensation Schedule(s) or resulting Customer Agreements (including pricing offered by Constellation to any Prospect or commission payable by Constellation to Broker under any Compensation Schedule), trade secrets, inventions, drawings, file data, documentation, diagrams, specifications, know-how, processes, formulas, models, flow charts, software in various stages of development, source codes, object codes, research and development procedures, research or development and test results, marketing techniques and materials, marketing and development plans, price lists, pricing policies or models, business plans, information relating to current, former or prospective customers and/or suppliers' identities, characteristics and agreements, financial information and projections, and employee files and information. Notwithstanding the foregoing, Constellation may disclose to Customer the Broker commission/fee payable on a specific Customer Agreement. Confidential Information also

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includes any information described above which Constellation obtains from a third party and which Constellation treats as proprietary or designates as Confidential Information, whether or not owned or developed by Constellation. Notwithstanding the above, however, no information constitutes Confidential Information which Broker can demonstrate by documentary evidence (A) is generic information or general knowledge, or if it is otherwise publicly known and in the public domain; (B) after being disclosed, entered into the public domain without any action or fault of Broker or its personnel or agents; (C) is obtained from any individual, firm or entity which had the unrestricted right to disclose it; or (D) is disclosed by Broker with Constellation's prior written approval.

"**Customer**" means a Prospect that has executed a Customer Agreement.

"**Customer Agreement**" means any written agreement executed by Constellation and a Prospect, in which Broker was instrumental in consummating the transaction. In circumstances where a Prospect and Constellation enter into a master electricity supply agreement, the Prospect shall only be deemed to be party to a Customer Agreement at such times and both Constellation and Prospect execute and deliver a pricing schedule or transaction confirmation (or the like) thereunder pursuant to which the Prospect becomes obligated to purchase electricity from Constellation.

"**Geographic Region**" means the state(s) and/or utility service territories in which the Broker is authorized to conduct business indentified on any executed Compensation Schedule(s). The Parties may expand the Geographic Region by executing additional Compensation Schedules from time to time.

"**Governing Jurisdiction**" shall have the meaning set forth in the Compensation Schedule(s); provided that the Governing Jurisdiction shall be deemed to be the State of New York if a matter arising under this Agreement involves Compensation Schedules with more than one Governing Jurisdiction, the Parties have not yet entered into a Compensation Schedule, or no Compensation Schedule is otherwise then in force.

"**Law**" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, rule of the public utilities commission, public service commission, independent system operator, regional transmission organization, or similar state commission, agency or body having jurisdiction over the Parties, electricity transactions, Utilities or electricity transmission or distribution systems.

"**Notice Period**" means the period of five business days following written notice from a Party pursuant to the Agreement.

"**Payment Date**" shall have the meaning set forth in the Compensation Schedule(s).

"**Prospect**" means an entity eligible to select a retail electricity supplier, located within the Geographic Region and submitted to Constellation by Broker, along with the requisite Prospect Data, for Constellation's evaluation.

"**Prospect Register**" means Constellation's data management system(s) (whether or not specifically designated as such) for tracking prospective customers and for associating those prospective customers with a lead source, such as Constellation, any broker (including Broker) or other third party, as applicable, for payment of commission and other data management purposes.

"**Utility**" means the local electricity distribution company owning and/or controlling and maintaining the distribution system required for delivery of electricity to Prospect accounts.

2. **BROKER PROSPECTS.** Broker acts as the representative for commercial and industrial businesses or other non-residential customers within that buy retail electricity and related services. During the term of the Agreement, Broker shall provide Constellation with written information regarding customers on whose behalf Broker is authorized to act ("Prospects") in connection with the purchase of retail electricity and related services, including but not limited to, the following information, as well as any additional information designated in the applicable Compensation Schedule(s) (collectively, "**Prospect Data**"):

(a) legal name of company or business, state of organization, and business address;

(b) DUNS Number, tax identification number, credit contact name, telephone number, fax number and e-mail address;

(c) account and meter number(s), service addresses, copies of electric service bill(s), usage information in electronic format and hard copy for both monthly and interval meters, usage information contact name, telephone number, fax number and e-mail address,

(d) Utility customer information release form signed by the Prospect, whereby Prospect designates Constellation to the Utility as an authorized recipient of Prospect's current and historical energy billing and usage data, meter and account number, and other customer information;

(e) billing address, billing contact name, number, fax number and e-mail address; and

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(f) notice address, notice contact name, number, fax number and e-mail address (must be an employee and/or authorized representative of the Prospect), Prospect profiles, decision-making processes, and all other information relevant to the process of contracting with the Prospect.

During the term of the Agreement, Broker shall (i) notify Constellation in writing of any changes to the Prospect Data promptly after Broker becomes aware of such change; (ii) periodically report to Constellation regarding the status of discussions with Prospects and/or communications to Customers, and (iii) coordinate with Constellation any activities relative to Customers.

3. QUALIFICATION AND REGISTRATION EXPIRATION OF PROSPECTS BY CONSTELLATION.

(a) Qualification and Registration: Constellation is in the business of selling electricity and related services to commercial and industrial customers and other non-residential organizations. Constellation will review the Prospect Data provided by Broker, as well as any other information Constellation may collect independently and make a determination, in Constellation's sole judgment, as to whether a Prospect is (a) qualified to receive a proposal from Constellation (which include, among other factors, historical consumption patterns and Utility service territories) and/or (b) registered to Broker in the Prospect Register. Constellation agrees to notify Broker within the Notice Period whether a Prospect will be registered to Broker in the Prospect Register. Broker acknowledges and agrees that (a) Constellation reserves the right to reject a Prospect for any reason, including that the Prospect has previously been registered in the Prospect Register to Broker or another broker (or other third party) during the previous 12 months, or for no reason, in its sole discretion, and (b) in no event shall Constellation be liable to Broker for any loss suffered by Broker for Constellation's failure to execute a customer agreement with a Prospect or register a Prospect to Broker in the Prospect Register.

(b) Registration Expiration. Broker acknowledges and agrees that registration of Prospects in the Prospect Register will expire with no further obligation on the part of Constellation, if (I) prior to execution of a Customer Agreement Constellation receives notice from a Prospect that such Prospect no longer is represented by Broker, or (ii) a valid Customer Agreement is not executed within ninety (90) days of registration unless (a) active and continuous negotiations between Constellation and such Prospect are then under way, in which case such period shall be extended by an additional thirty (30) days or (b) Constellation extends the negotiation period by written notice to Broker.

(c) Administration of Prospect Register. Constellation expressly reserves the right to administer NewEnergy's Prospect Register separately and distinctly from CES' Prospect Register.

4. NON-EXCLUSIVITY. Broker acknowledges and agrees that (a) this Master Broker Agreement does not give any right, exclusive or otherwise, to Broker to sell or represent to a Prospect that it has the ability to sell the products and services of Constellation; and (b) Constellation may sell its products and services through its direct sales force, in connection with other independent brokers or through any other means Constellation deems appropriate. All trademarks and service marks, logos, trade names, copyrights associated with any of Constellation's marketing materials, and all associated goodwill, shall remain the property of Constellation, and all extension of goodwill created by Broker shall inure to the benefit of Constellation.

5. MUTUAL REPRESENTATIONS AND WARRANTIES. Each Party warrants and represents to the other the following: (a) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (b) it is authorized and qualified to do business in the jurisdictions necessary to perform under the Agreement; (c) the execution, delivery and performance of the Agreement are duly authorized and do not violate any governing documents, contracts to which it is a party or applicable Law; and (d) there is no material event(s) or other agreement(s) which would impair that Party's right, authority or ability to execute the Agreement and otherwise consummate the transactions contemplated by the Agreement, or which would represent any conflict of interest with the Broker, any Prospect or Constellation.

6. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF BROKER. Broker warrants, represents and covenants, as of the Effective Date and the date of execution of each Compensation Schedule and Customer Agreement with one of Broker's Prospects, that: (a) the Prospect Data provided to Constellation is true and correct to the best of its knowledge; (b) Broker has any and all licenses, permits and approvals required under applicable Law to perform the services in the Geographic Region; (c) Broker is authorized to act on behalf of Prospects that Broker submits to Constellation, Broker has no authority to act on behalf of Constellation, and Broker is not authorized to and shall not alter or modify in any way any Customer Agreements, or any sales, marketing, or pricing materials provided by Constellation to Broker for the benefit of Prospects; (d) Broker will use its skills and abilities and perform its duties hereunder in a professional and conscientious manner in accordance

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with all applicable Law and standards, and will not make any oral or written representations or promises or statements which conflict with the terms of a Customer Agreement entered into with a Prospect; (e) there are no pending, or to the knowledge of Broker, threatened, investigations, actions or judgments against Broker, whether criminal or civil and (i) involving matters of fraud or moral integrity, or (ii) constituting a felony; (f) Broker shall bear all of its own business expenses in performance of the services under the Agreement.; (g) Broker is responsible for paying any and all taxes incurred as a result of Broker's compensation or otherwise providing services under the Agreement through its employees or permitted subcontractors, including estimated taxes, FICA, and other employment or consulting taxes or obligations; (h) Broker maintains any and all insurance applicable to the performance of its obligations hereunder as required by Law, including workers' compensation, health and disability insurance; (i) Broker shall disclose to all Prospects and Customers: (1) that they will be obligated to pay a Broker fee for their services; (2) the amount of such Broker fee; and (3) that such Broker fee is collected from Customer as part of their contract price set forth in the Customer Agreement and remitted by Constellation to Broker on behalf of the Customer for services provided to Customer by Broker; and (j) Broker shall hold harmless, as well as defend and indemnify, Constellation for any damages, losses or costs of any kind incurred by Constellation associated with a breach of the representations set forth in this Section 6. The provisions of this clause 6(j) shall survive the expiration or termination of the Agreement for any reason.

7. **DISBURSEMENT OF FEE**. From time to time from and after the Effective Date, Constellation and Broker may execute one or more Compensation Schedule(s) to govern the disbursement of Broker's fee with respect to any Prospects that become Customers. Notwithstanding the mutual execution and delivery of this Master Broker Agreement and/or the registration of a Prospect to Broker in the Prospect Register, under no circumstances shall Constellation have any obligation to enter into one or more Compensation Schedule(s) with Broker, and Broker shall not have any right to any fee, commission or other amount from Constellation unless and until Constellation has delivered a Compensation Schedule that is satisfactory to Constellation and the Broker has fulfilled all other requirements under the Agreement or under the Compensation Schedule (including any signatory requirements, if applicable). Constellation may send Broker a Compensation Schedule to memorialize the compensation/commission/fee and if Broker fails to object in writing to any term in the Compensation Schedule within fifteen (15) Business Days, the Compensation Schedule shall constitute the definitive written expression of the compensation/commission/fee. "**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time. In consideration of meeting the requirements of the Agreement, Constellation agrees to disperse to Broker on or before the Payment Date the fee/commission amounts set forth in the applicable Compensation Schedule, if any, for (a) the initial term of any Customer Agreement(s) executed thereunder; and (b) renewal or extension of any such Customer Agreements, if and only if, (i) Broker participates actively and materially in the efforts to sign-up, renew or extend the Customer Agreements with Constellation, as determined by Constellation, and (ii) a new Compensation Schedule is sent to Broker. Upon termination of a Customer Agreement for any reason, Constellation's obligation to remit commission to Broker under the Agreement will also terminate, and Customer shall no longer be designated in the Prospect Register as a Prospect of Broker. If in the future Constellation enters into a new Customer Agreement with that Customer, no amounts shall be payable to Broker unless Constellation and Broker shall have entered into a new Compensation Schedule covering that Customer. Broker shall not be entitled to any compensation for prospective customers outside of the Geographic Region unless Customer has engaged Broker to act on their behalf; and until the Parties agree on a Compensation Schedule applicable to the expanded territory. Nothing herein or otherwise shall require that Constellation agree to enter into any Compensation Schedule with Broker or extend the Geographic Region set forth in any Compensation Schedule. Broker agrees that any Compensation Schedule shall be deemed irrevocably and unconditionally agreed to by the Broker if, within 10 days from the date that such Compensation Schedule was sent to Broker, Broker has not raised any objections to such Compensation Schedule. Except for the compensation expressly payable to Broker under the Compensation Schedule(s), no other amounts are payable to Broker, and nothing in the Agreement imposes a duty on Constellation with respect to any Customer Agreements, including any duty on Constellation to collect amounts unpaid by Customer.

8. **TERM**. The Master Broker Agreement will commence on the Effective Date and, unless terminated earlier as otherwise provided in this Master Broker Agreement, will continue for a period of one year, and will automatically renew for successive one-year terms. Either Party may terminate this Master Broker Agreement without cause upon thirty (30) days prior written notice to the other Party. If, at the time of termination of this Master Broker Agreement without cause, any Compensation Schedule(s) remain in effect, such termination will not become effective as to any such Compensation Schedule until its expiration, which shall continue to be governed by the terms and conditions of this Master Broker Agreement. Constellation shall not be liable to Broker by reason of the expiration or termination of the Agreement for any compensation or damages on account of any loss of prospective profits or anticipated commission or any commitments made by Broker in connection with the Agreement, the creation of goodwill by Broker on behalf of Constellation, or the anticipation of extended performance hereunder.

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9. DEFAULT; TERMINATION FOR DEFAULT. A "Broker Default" means any one of the following: (a) any representation or warranty made by Broker in the Agreement proves to have been incorrect, false or misleading when made or ceases to remain true during the term of the Agreement, if not cured within five business days after written notice from Constellation; (b) Broker's breach of this Agreement or the failure by Broker to perform any obligation set forth in the Agreement (other than events otherwise specifically covered as a separate Broker Default hereunder) and where within five business days after receipt of written notice from Constellation it is not cured in circumstances where such failure or breach is curable (if the failure or breach is not curable no cure notice need be provided); or (c) Broker (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 20 business days after such filing; (iv) otherwise becomes bankrupt or insolvent (however evidenced) or suspends operations in the normal course; or (v) is unable to pay its debts as they fall due. If a Broker Default occurs, Constellation may, in its sole discretion, at any time, terminate the Agreement in whole or solely with respect to those Compensation Schedules affected by such Broker Default, effective upon written notice to Broker, and Constellation will have no further liability to make commission compensation payments under such Compensation Schedules affected by the Broker Default. For purposes of clause (b), Broker acknowledges and agrees that any breach of the confidentiality obligations in Section 11 below or the representations in Section 6 above shall be deemed for purposes of this Agreement as not capable of cure and constitutes grounds for immediate termination by Constellation.

10. OBLIGATIONS UPON EXPIRATION AND TERMINATION; SURVIVAL. Upon termination of Broker's engagement for any reason, Broker shall immediately surrender to Constellation all documents, lists, marketing brochures and materials, Prospect Data, books and records of, or in connection with, Constellation's business, and all other property belonging to Constellation (including all Confidential Information), it being expressly understood that all such lists, books and records, and other documents, are the property of Constellation. Notwithstanding anything to the contrary in this Master Broker Agreement, after termination of the Master Broker Agreement (other than for Broker Default), Broker shall be paid commission when due only for the remainder of the current term of Customer Agreement(s) signed prior to the date of such termination pursuant to any Compensation Schedule(s) in effect as of the date of termination. Broker shall not be entitled to any commission or other payment, whether as a so-called "procuring cause" or otherwise, with respect to any Prospects who sign, renew or extend Customer Agreements after termination of this Master Broker Agreement. The following applicable provisions of this Master Broker Agreement will continue in effect after termination or expiration of the Agreement: Sections 6(j), 10, 11, 12, 15, 16, 17 and 20 of this Master Broker Agreement. Except as expressly provided in the Agreement, neither Constellation nor Broker shall have any further rights or obligations with respect to the other Party upon termination of the Agreement.

11. CONFIDENTIALITY. Broker agrees to maintain in confidence all Confidential Information, not to disclose any Confidential Information to any third parties (including that Broker will not make any public statement or announcement concerning execution of the Agreement or its relationship with Constellation) without the prior written consent of Constellation, and not to use the Confidential Information for any purpose other than as expressly permitted by the Agreement; provided that Broker may disclose to its registered Prospects the pricing proposals offered by Constellation in connection with the performance of Broker's services. If disclosure of any Confidential Information is sought through process of a court, or a state or federal regulatory agency or other legal compulsion, Broker will notify Constellation immediately to afford Constellation the opportunity to oppose such disclosure or otherwise obtain a protective order or other relief as may be available. Broker will cooperate with Constellation in its attempts to obtain such protections. In any event, Broker will disclose only that portion of Confidential Information required to comply with applicable Law. Broker acknowledges that any breach of this Section 11 will cause irreparable harm to Constellation for which money damages would not adequately compensate Constellation. Accordingly, in addition to all other remedies expressly provided in the Agreement, Broker agrees that Constellation shall be entitled to all available remedies at equity (including without limitation, injunctive relief) and in law. The provisions of this Section 11 shall survive the expiration or termination of the Agreement for any reason.

12. COMPETITIVE ACTIVITY; NON-SOLICITATION; NON-DISPARAGEMENT. During the term of the Agreement (including Compensation Schedule obligations) and for six months after the expiration or termination of the Agreement for any reason, Broker shall not solicit, or assist any other person or commercial entity to solicit, or request or advise any existing Constellation customer to breach its agreement with Constellation, or otherwise to withdraw, curtail or terminate early its business dealings with Constellation. During the term of the Agreement and for one year after the expiration or termination of the Agreement, Broker shall not solicit, or assist any other person to solicit, or request or advise any existing employee of Constellation or its

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Affiliates to terminate employment with Constellation or its Affiliates. Upon termination or expiration of the Agreement for any reason, both Parties shall refrain from disparaging the other Party and its Affiliates, or any of their respective officers, directors, or shareholders; provided, however, that each Party is permitted to make truthful statements in response to requests for information or in compliance with a lawful subpoena or court order. The Parties acknowledge that any breach of this Section 12 may cause irreparable harm to the other Party for which money damages may not adequately compensate. Accordingly, in addition to all other remedies expressly provided in the Agreement, the harmed Party shall be entitled to all available remedies at equity (including without limitation, the pursuit of injunctive relief and without the necessity of posting a bond or similar surety in pursuing such relief) and in law. The provisions of this Section 12 shall survive the expiration or termination of the Agreement for any reason.

13. **AUTHORITY; NO AGENCY RELATIONSHIP.** Broker is an independent contractor, acting on behalf of Prospects and/or Customers under the Agreement, and nothing contained herein or in any Compensation Schedule shall be construed as creating a relationship of employer and employee or principal and agent between them. Accordingly, Broker is not entitled to any benefits accorded to Constellation's employees, including, without limitation, workers' compensation, disability insurance, vacation or sick leave. Broker shall not have any authority to execute Customer Agreements or other legally binding documents on behalf of Constellation, and shall not hold itself out as having such authority to act as an employee, agent or officer of Constellation. Broker shall not incur, assume, agree to pay on behalf of Constellation or otherwise commit Constellation to any contractual agreement or obligation, or any charge, fee or expense. Nothing in the Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking. Broker acknowledges and agrees that in referring Prospects to Constellation hereunder it is acting on behalf of such Prospects and does not represent Constellation.

14. **CUSTOMER AGREEMENTS**. Any transaction between Constellation and a Prospect and/or Customer will be formed and effectuated by a written agreement negotiated and executed by Constellation and the Customer. It is specifically recognized and agreed that Constellation, in its sole discretion, may from time to time, change the form as well as the terms and conditions under which it will enter into a Customer Agreement, and nothing herein shall be deemed to prohibit a Customer and Constellation from agreeing to terminate a Customer Agreement early. Further, all terms and conditions of the Customer Agreement are subject to Constellation's approval and Broker will not directly or indirectly represent or imply otherwise to a Prospect and/or Customer. Constellation is responsible for evaluating, approving or denying each Prospect's credit. Constellation shall have the sole right to elect not to serve a Prospect or to exercise the termination rights under any Customer Agreement for any reason permitted under the Customer Agreement. Upon termination of a Customer Agreement for any reason, Constellation's obligation to remit commission to Broker under the Agreement will also terminate, and Customer shall no longer be designated in the Prospect Register as a Prospect of Broker. Further, if a Customer should default in making payments to Constellation under its Customer Agreement and Constellation has already paid the commission to Broker for the default period, Constellation has the right to either (a) deduct that amount previously paid from the total amount due to Broker in a subsequent period; or (b) invoice Broker for such amounts, payable on demand.

15. **INDEMNIFICATION**. Each Party shall hold harmless, as well as defend and indemnify, the other Party and its Affiliates, and all of their respective officers, directors, members, shareholders, associates, employees, agents, representatives, successors and assigns from and against any and all liabilities, damages, claims, charges, fees or taxes, penalties, fines, costs and expenses (including attorneys' fees) incurred or claimed and resulting from or related to: (a) any breach or default of the indemnifying Party's obligations under the Agreement; (b) any of the indemnifying Party's negligent acts or omissions or willful misconduct, or any such act, omission or misconduct on the part of its employees or agents; (c) claims from third parties used or employed by the Indemnifying Party in fulfilling its obligations provided hereunder; (d) claims related to Brokers representation of its customers including those related to compensation and (d) in the case of Broker, any breach by Broker of a representation or warranty made by Broker in connection with a Customer Agreement, or any claim by a Customer that Broker lacked authority to enter into an Customer Agreement on behalf of such customer. These indemnification obligations shall survive any termination of the Agreement.

16. **LIMITATION OF LIABILIITY**. Notwithstanding any other provision of the Agreement to the contrary, the entire liability of Constellation for any and all claims of any kind arising from or relating to the Agreement will not exceed the full amount due to Broker under any Compensation Schedule(s) then in effect and will be limited to direct actual damages only, subject in all cases to an affirmative obligation on the part of the Broker to mitigate its damages. **Furthermore, Constellation shall not have any liability to Broker whatsoever under this Agreement or at law, in equity or otherwise, including under theories of quantum meruit or unjust enrichment, unless and until the Parties shall have mutually agreed and delivered one or more Compensation Schedule(s) that remain in effect.** EXCEPT TO THE EXTENT NECESSARY TO FULFILL ITS

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INDEMNITY OBLIGATIONS RESPECTING A CLAIM OR ACTION BROUGHT BY A THIRD PARTY, AND EXCEPT FOR A BREACH OF SECTION 11 REGARDING CONFIDENTIALITY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER REMEDY AT LAW OR EQUITY. The provisions of this Section 16 shall survive the expiration or termination of the Agreement for any reason.

17. NO THIRD PARTY BENEFICIARIES. The Agreement is for the sole and exclusive benefit of the Parties hereto, and no third party will have any rights under the Agreement whatsoever, other than individuals and entities subject to indemnification under Sections 6(k) and 15 above. If Broker is represented by a third party in connection with the procurement of the Agreement or if Broker employs any third party in connection with its performance hereunder, Broker shall (a) obtain prior written consent from Constellation for such engagement(s) or representation(s), (b) be fully responsible for any fee, commission or other compensation owing any such third party, (c) arrange for payment of such third party without involving Constellation, and (d) indemnify, defend and hold Constellation harmless from any and all claims for compensation by any such third party. The provisions of this Section 17 shall survive the expiration or termination of the Agreement for any reason.

18. ASSIGNMENT. Broker shall not assign any of its rights and obligations under this Master Broker Agreement or any Compensation Schedule(s) without the prior written consent of Constellation, which it may withhold in its sole discretion. Constellation may assign and be released from any of its rights and obligations under this Master Broker Agreement or any Compensation Schedule(s) without consent to an Affiliate or to any person or entity succeeding to all or substantially all of Constellation's assets or business or the division or region of Constellation to which the Agreement relates or into which Constellation is merged or otherwise combined or reorganized; provided the succeeding entity agrees to be bound to this Agreement.

19. ENTIRE AGREEMENT; AMENDMENT. This Agreement (which constitutes the Master Broker Agreement and any Compensation Schedule(s) in effect between the Parties from time to time) embodies the Parties' entire agreement and understanding, supersedes all prior agreements and understandings (whether written or oral) regarding the subject matter of this Agreement, and may not be contradicted by any prior or contemporaneous oral or written agreement. A facsimile copy of either Party's signature will be considered an original for all purposes under this Agreement, and each Party will provide its original signature upon request. No amendment to this Agreement, including (if applicable) the Compensation Schedule(s), will be valid or given any effect unless signed by both Parties. Any alteration, addition, or modification made by Broker to the preprinted terms of this Agreement shall be void and without any effect. Broker agrees that no employees of Constellation are authorized to represent that Constellation will enter into any particular Compensation Schedule with Broker prior to the Compensation Schedule being executed in writing by an authorized representative of Constellation. In the case of any conflict between this Master Broker Agreement and any Compensation Schedule(s), the Compensation Schedule(s) will control, but only with respect to the Geographic Region and/or Customers listed on such Schedule(s). The section headings used in this Agreement are for reference purposes only and will in no way affect the meaning of the provisions of this Agreement.

20. CHOICE OF LAW; VENUE; ATTORNEY FEES AND EXPENSES. The validity, performance, and construction of this Agreement will be governed and interpreted in accordance with the laws of the Governing Jurisdiction, without giving effect to conflict of law principles. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement exclusively by a court located in the Governing Jurisdiction (and each Party hereto waives any right to object to venue in this regard). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs. The provisions of this Section 20 shall survive the expiration or termination of the Agreement for any reason.

21. WAIVER AND SEVERABILITY. Failure to provide notice of, or object to, any default under this Agreement will not operate or be construed as a waiver of any future default, whether like or different in character. If any portion of this Agreement, or application thereof to any person or circumstance, is held legally invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law and equity, and there will be deemed substituted for the invalid provisions such provisions as will most nearly carry out the mutual intent of the Parties as expressed in this Agreement to the fullest extent permitted by applicable Law.

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Constellation
An Exelon Company

22. NOTICES. To be effective, all notices must be in writing delivered by hand, by first class mail, postage prepaid, by electronic facsimile transmission (with verification of delivery), or by express carrier to the addresses provided in this Master Broker Agreement or the applicable Compensation Schedule(s), as the case may be. A Party may change its address by providing notice of such change in accordance herewith.

23. AFFIRMATION. Broker affirms that it has read this Agreement in its entirety and it agrees to the terms and conditions contained herein. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

24. ACCEPTANCE. *This Master Broker Agreement shall not be binding or enforceable against Constellation unless and until signed by an authorized representative of Constellation. Nothing in this Master Broker Agreement shall be deemed to require that Constellation enter into a Compensation Schedule with Broker from and after the Effective Date.*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the respective dates set forth below.

Constellation NewEnergy, Inc.

By: David T Donat
Name: David T. Donat
Title: Vice President
Date: 2015-11-13 09:38-06:00

Constellation Energy Services, Inc.

By: David T Donat
Name: David T. Donat
Title: Vice President
Date: 2015-11-13 09:39-06:00

Constellation Energy Services of New York, Inc.

By: David T Donat
Name: David T. Donat
Title: Vice President
Date: 2015-11-13 09:39-06:00

Notice address for all Constellation entities:
1221 Lamar Street, Suite 750
Houston, TX 77010
Attn: Legal Department

Broker: M&L Service Providers LLC d/b/a Diamond Energy

By: [signature]
Name: Moishe Ungarischer
Title: Owner
Date: 11/10/2015
Tax Payer ID#: 45-4925855

Broker Notice Address:

Address: 134 Leonard St
City, State, Zip: Lakewood NJ 08701
Attn: DIAMOND ENERGY
Phone: 732 557-4915

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Errors and omissions excepted.