COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. _____

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.,

Plaintiff,

v.

MATEP LLC, MATEP LP, and LONGWOOD ENERGY PARTNERS LLC,

Defendants.

Jury Trial Demanded

COMPLAINT

Introduction

1. The Brigham and Women's Hospital, Inc. ("Brigham & Women's") brings this Complaint for breach of contract and violations of Mass. Gen. Laws ch. 93A, § 11, among other claims, against MATEP LLC, MATEP LP, and Longwood Energy Partners, LLC ("LEP"). MATEP LLC and MATEP LP (collectively, "MATEP")[1] are the owners and operators of the Medical Area Total Energy Plant (the "Plant"), a district energy generating plant and distribution system that provides electricity, steam, and chilled water under a long-term utilities contract to Brigham & Women's, among other healthcare, research, and educational institutions.[2] MATEP supplied electricity in accordance with the electricity pricing provisions contained in the operative contract (and its virtually identical predecessor contracts) for over 20 years. Now, under the new ownership of LEP, MATEP has imposed fabricated, extra-contractual electricity price surcharges to boost its corporate-owners' bottom line. Through these surcharges, MATEP has collected and will continue to collect millions of dollars to which it is not entitled from

[1] MATEP LLC is owned by MATEP LP, which in turn is ultimately owned by LEP.
[2] Those institutions include Harvard Medical School, Beth Israel Deaconess Medical Center, Brigham and Women's Hospital, Boston Children's Hospital, and Joslin Diabetes Center (together, the "Hospitals").

Brigham & Women's over the remaining term of the contract. The Reliability Adder, as defined herein, ignores the clear contract terms, disregards decades of course of dealing between the parties, and flies in the face of two rulings of this Court on nearly identical issues.

2. In 2017, two multi-billion-dollar international energy-related companies – Engie North America ("Engie") and Axium Infrastructure Partners ("Axium") – formed LEP (a joint venture) to acquire MATEP. LEP acquired MATEP on March 30, 2018. Before LEP acquired MATEP, LEP conducted extensive due diligence on the existing contracts with Brigham & Women's and the other Hospitals, which expire in 2051. MATEP well understood each contract's meaning and its history, including the history before this Court. MATEP's owners, Engie and Axium (through LEP), realized that by acquiring MATEP they could trade on the goodwill and name of Brigham & Women's and the other Harvard Medical School-affiliated teaching Hospitals to gain a competitive advantage in the burgeoning "energy-as-a-service" market. The strategy succeeded; Engie and/or Axium now tout a number of high-profile educational institutions, including the University of Iowa and Georgetown University, as customers.

3. As is now clear, MATEP's owners never intended to honor the contract over its term. Almost immediately after LEP acquired MATEP, it sought to renegotiate the contract into a form more favorable to MATEP. When MATEP was unsuccessful in those efforts, MATEP unilaterally imposed a newly concocted electricity pricing surcharge for "reliability" (the "Reliability Adder") that is untethered to the contract. LEP's goal, through MATEP, was to (1) obtain additional revenue that has no basis under the existing contract, and (2) force Brigham & Women's to negotiate a new contract that would be more favorable to MATEP from an operational and financial perspective.

4. MATEP labeled the Reliability Adder a "Utility Charge" under the contract, which arguably requires the payment of the fabricated charge pending the resolution of any dispute. MATEP's objectives are clear – not only does it seek to obtain additional revenue to which it is not entitled from Brigham & Women's, but MATEP also intends to prematurely force

Brigham & Women's to negotiate a new contract that would lessen MATEP's obligations and impose significant new financial obligations on Brigham & Women's.

5. MATEP's conduct violates the express electricity pricing provisions of the contract. The contract establishes an initial price for electricity, and then allows Brigham & Women's to point to a cheaper "reference" price for electricity that would have been available to Brigham & Women's in the competitive market if it was not required to obtain its electricity from MATEP under the contract. This competitive electricity market pricing principle has governed the relationship between the parties since 1998, shortly after Massachusetts formally implemented the Electric Restructuring Act of 1997. At that time, MATEP initially tried to bypass this competitive market pricing principle by arguing that electricity provided by the competitive market was not "comparable" for purposes of the contract because the electricity was not "actually available" (that is, the electricity was a financially settled product that was not physically delivered). This Court flatly rejected MATEP's efforts – Judge van Gestel determined that electricity delivered through the competitive market was actually available (and, perforce, comparable) to that provided by MATEP under the contract. If the electricity from the competitive market was not comparable, then the pricing provision agreed upon by the parties (and the parties' course of conduct from 1998 to the present) would have been meaningless. Now, MATEP seeks that precise outcome; ignoring and rejecting decades of its own performance and this settled precedent to claim that competitive market pricing is not available to Brigham & Women's and the other Hospitals.

6. Further, MATEP has now assessed and seeks to collect interest payments from Brigham & Women's despite having agreed to forego invoicing and collecting the "Reliability Adder" while the parties engaged in pre-litigation dispute resolution efforts. During that time period, MATEP did not invoice Brigham & Women's for those non-invoiced amounts, and thus

Brigham & Women's has a zero balance on its invoices. Nevertheless, MATEP has imposed and seeks to collect twelve months of interest on the "accrued" amount of the Reliability Adder.[3]

7. MATEP's conduct violates the express language in the contract permitting interest to accrue only on charges which have been invoiced and not been timely paid.

8. MATEP has breached the utilities contract, and its egregious behavior violates the prohibition on unfair and deceptive acts or practices under G.L. c. 93A.

Parties

9. Plaintiff Brigham and Women's is a Massachusetts nonprofit corporation, organized under Chapter 180 of the Massachusetts General Laws, with a principal place of business in Boston, Suffolk County.

10. Brigham & Women's is a teaching hospital of Harvard Medical School, and is committed to providing diagnostic, therapeutic, and other medical services to residents of Boston and across New England.

11. Brigham & Women's is a member of Longwood Medical Energy Collaborative, Inc., a consortium of the Longwood Medical Area hospitals and educational institutions – The Beth Israel Deaconess Medical Center, Inc., The Brigham and Women's Hospital, Inc., Dana-Farber Cancer Institute, Inc., Joslin Diabetes Center, Inc., The Children's Hospital Corporation, and President and Fellows of Harvard College, acting on behalf of its Harvard Medical School and Harvard T.H. Chan School of Public Health (each a "Hospital," and together the "Hospitals").

12. Defendant Longwood Energy Partners ("LEP"), is a single-purpose joint venture that was created to purchase, own and operate MATEP. LEP effectively is owned by Engie North America and Axium Infrastructure Partners. LEP conducts business within Massachusetts and is subject to this Court's jurisdiction pursuant to M.G.L. c. 223A.

[3] Brigham & Women's notes that the invoices issued to it by MATEP do not separately specify the amount of interest that was assessed by MATEP, nor do they identify how that interest was calculated. Instead, the invoices simply present the total amount, with interest, that MATEP alleges is owed to it.

13. Defendant MATEP LP is a limited partnership with LEP as its limited partner and MATEP GP LLC as its general partner. MATEP GP LLC is a wholly owned subsidiary of LEP. MATEP LP is registered with the state of Massachusetts and lists 474 Brookline Ave., Boston, MA 02115 as its principal office address. MATEP LP is subject to this Court's jurisdiction pursuant to M.G.L. c. 223A.

14. Defendant MATEP LP is the owner of the Medical Area Total Energy Plant ("the Plant"), a district energy generation plant and related distribution system. The Plant provides electricity, steam, and chilled water to Brigham & Women's, the Hospitals and other institutions in the Longwood Medical Area.

15. Defendant MATEP LLC is owned by MATEP LP, and MATEP LLC is the party to the utilities contract that governs the relationship between Brigham & Women's and MATEP. MATEP LLC maintains a principal place of business located at 474 Brookline Ave., Boston, MA 02115. MATEP LLC is subject to this Court's jurisdiction pursuant to M.G.L. c. 223A.

Factual Allegations

The Instant Dispute

16. Although the parties have amended the utilities contract over time,[4] the central pricing terms for utilities have remained constant for over twenty years.

17. The contract between the parties requires that MATEP provide utilities at a price comparable to the competitive market when the competitive market is "available" and "comparable." Amended Utilities Contract, between The Brigham and Women's Hospital, Inc. and MATEP LLC, dated September 30, 2015 ("AUC"), attached as Exhibit 1.

18. In a prior litigation between the parties on similar issues, Judge van Gestel concluded that a competitive electric market arose in 1999: "this Court rules that a proper understanding of the method by which electricity is 'delivered' through the grid in Massachusetts

[4] The parties entered into several Restated Utilities Contracts ("RUCs") in the 1980s and 1990s, which culminated in the Third Amendment to the RUC in 1998 (the "Third Amendment"). The parties renegotiated the Third Amendment in 2015, which resulted in the Amended Utilities Contract ("AUC"). The pricing provisions in the Third Amendment and the AUC are substantively identical.

mandates a conclusion that electricity [from the competitive market] became 'actually available' … by April 1, 1999." *Beth Israel Deaconess Med. Ctr., Inc. v. MATEP, LLC*, 13 Mass. L. Rptr. 595, at *7 (Mass. Sup. Ct. Mar. 20, 2001) ("2001 Decision"), attached as Exhibit 2.

19. For the last twenty years, MATEP provided utilities at the competitive market price designated by the Hospitals. The competitive market price was established for each year by the Hospitals through their designation of the price that was paid in the competitive market for electricity that was actually delivered to an "exemplar building" in the Longwood Medical Area. This building had load factor and usage characteristics similar to the Hospitals. The price paid by the exemplar building is called the "reference price."

20. As it had for many years, in early 2021 Brigham & Women's designated a reference price for calendar years 2022 and 2023. MATEP (under LEP's new ownership) rejected the designation. Similarly, the Hospitals designated reference prices for 2024, 2025, and 2026, yet MATEP has rejected those designations as well.

21. After rejecting the Hospitals' designation of a reference price for calendar years 2022 and 2023, MATEP then unilaterally imposed a "reliability surcharge," purportedly to "quantify the value of the level of service comparable to that provided by MATEP." Letter from MATEP to LMEC, dated August 31, 2021, attached as Exhibit 3.

22. This "reliability surcharge" (or so-called "Reliability Adder") is not recognized in the AUC, the electric generation industry, or the competitive electric market. It was created from whole cloth so MATEP would generate additional profit to meet its new owners' financial performance goals. Ultimately, the Reliability Adder was intended to force Brigham & Women's and the other Hospitals to prematurely negotiate a new contract with Defendants that would be substantially more advantageous to MATEP than the AUC.

Harvard Builds the Plant for the Longwood Medical Area,
Using a Regulated Market Benchmark to Set Prices

23. MATEP's history dates back to 1906, when Harvard University ("Harvard") built a powerhouse to provide electricity for the Harvard Medical School, only yards from where

MATEP stands today. It later added steam and chilled water capabilities. Harvard built the current Plant in the 1980s.

24. Harvard owned and operated MATEP until 1998.

25. For many years during Harvard's ownership of the Plant, MATEP sold electricity to the Hospitals at rates that were the same as those charged for similar services by the Boston Edison Company (which later became NSTAR, then Eversource). The electricity market was fully regulated at the time, and MATEP used the Boston Edison Company's "tariff" prices as a reference standard (as MATEP did not have its own rate structure).

26. The original utilities contracts between Harvard and the Hospitals arose on October 1, 1980. These contracts set a single price for electricity – the "dollar amount the User would have been required to pay the Boston Edison Company" at the time.

27. By 1997, Harvard was preparing to sell the Plant. Brigham & Women's and the other Hospitals, as users of the Plant, had certain approval rights regarding any sale.

28. As Harvard anticipated the sale, it (as MATEP) engaged in extensive negotiations with the Hospitals to address the expected arrival of the competitive electricity market in Massachusetts. The result was the "Third Amendment" to the existing utilities contract. Pursuant to that Third Amendment, the parties then amended and restated the utilities contract in its entirety. Restated Utilities Contract between The Brigham and Women's Hospital, Inc. and President and Fellows of Harvard College, dated Oct. 31, 1997, attached as Exhibit 4 ("Third Amendment").[5] Around the same time, Massachusetts was restructuring the electric industry to, among other things, allow private parties to supply electricity to end-use consumers. The Third Amendment accounted for the participation of these new competitive market participants while maintaining the historic understanding and agreement on electricity pricing between the parties – namely, that the Hospitals would not pay more for electricity than if the utility contract was not in place.

[5] Although each Hospital has its own Third Amendment, the substance of each is identical for these purposes. *See* Ex. 5, 2005 Decision at *2 n.3.

29. The parties were represented by sophisticated counsel. The Third Amendment was negotiated on behalf of Harvard by MATEP's president and its counsel – Skadden Arps Slate Meagher & Flom, LLP. The Hospitals were represented by Hale and Dorr, LLP (n/k/a "WilmerHale").

30. The Third Amendment incorporated the prior agreements between the parties, and remained in effect from 1997 until 2015. The parties renegotiated the Third Amendment in 2015, which resulted in the current contract – the Amended Utilities Contract or "AUC." The AUC's pricing provisions underlying this dispute are virtually identical to the provisions set forth in the Third Amendment. As a result, the negotiations of, and performance under, the Third Amendment are central here.

31. The Third Amendment set forth a comparability principle reiterated in the AUC: "Harvard and the User acknowledge that the [u]tilities to be provided ... are to be provided on the basis of pricing comparable to pricing available in a competitive market for levels of service comparable to that required to be provided by Harvard ...." Ex. 4, Third Amendment at 2–3; Ex. 1, AUC at 2.

32. The Third Amendment also set forth the triggering event for competitive market pricing, which is reiterated in the AUC: "when a competitive market arises in which alternative supplies of electricity at comparable levels of services ... are actually available ... then the new reference standard shall be the price ... of such alternative supplies." Ex. 4, Third Amendment at 10; Ex. 1, AUC at 10.

33. The purpose of the comparability principle was to provide the Hospitals with an opportunity to avail themselves of the competitive market's pricing advantages. As Judge van Gestel noted about the purpose of the Third Amendment, "[t]he user hospitals, themselves non-profit institutions, understandably desired to have the same advantage as everyone else in being able to purchase their electricity … at the best market rate for comparable service." *Beth Israel Deaconess Med. Ctr., Inc. v. MATEP, LLC*, No. 994530BLS, 2005 WL 1684081, at *15 (Mass. Sup. Ct. June 16, 2005) ("2005 Decision"), attached as Exhibit 5.

34. Further, in anticipation of the competitive market, counsel for the Hospitals made clear that the Third Amendment only reinforced the pricing provisions of the prior agreements – "[t]he parties acknowledge that the basic principles remain the same. The user institutions *should pay electrical costs comparable to other similar institutional and/or commercial users* … [i]n sum, the rates payable by the user institutions *should not be more than comparable rates the institutions would pay in an open market.*" Ex. 5, 2005 Decision, at *5 (emphasis added).

35. Harvard, through MATEP, agreed. "[T]he purpose of the Third Amendment was to clarify a number of provisions, but not to change the pricing structure that had been set forth in the original Utilities Contracts" in 1980. Ex. 5, 2005 Decision, at *6.

36. Counsel for Brigham & Women's and the other Hospitals confirmed this understanding: "After deregulation, the market might expand to include other suppliers ... and the user hospitals *would pay whatever the market price was as a result of the competition of new suppliers.*" Ex. 5, 2005 Decision, at *6 (emphasis added).

37. The Third Amendment was executed on October 31, 1997.

Harvard Sells MATEP and the Plant as the Competitive Market Emerges

38. Simultaneously, Harvard was negotiating to sell MATEP and the Plant to a third-party – Advanced Energy Systems, Inc. ("AES"), which became the owner and operator of MATEP and the Plant.

39. In or about May 1998, an electric company known as PECO Energy Company ("PECO") contracted to provide electricity to many Massachusetts health and educational institutions. PECO's rates were more than 20% lower than Boston Edison's.

40. On or about June 1, 1998, Brigham & Women's and MATEP entered into a letter agreement that established the basis upon which MATEP would recognize the electricity price in the PECO contract as the "reference price" under the Third Amendment. Letter Agreement between MATEP LLC and Dana-Farber Cancer Institute, Inc., dated June 1, 1998 ("Letter

Agreement"), attached as Exhibit 6.[6] Subject to certain preconditions, Brigham & Women's agreed to pay the difference between the PECO contract price and the Boston Edison tariff price into escrow. Ex. 6, Letter Agreement.

41. During the Letter Agreement negotiations, the Hospitals made clear that "comparability" was based on the levels of electrical service available at other hospitals in the Boston area (and not any unique characteristics of MATEP); *i.e.*, comparability "would be determined by reference to: the levels of electrical service commonly utilized by other critical care institutions…." Letter from Hospitals to Harvard and MATEP, dated Apr. 14, 1998, attached as Exhibit 7. The Hospitals excluded certain characteristics of the Third Amendment and the MATEP Plant from the concept of "comparability" – "the Users require that certain elements of the [utilities contract] be clearly confirmed as not related to comparability such as: (a) the existence of liquidated damages and take-over rights and (b) the availability of dedicated onsite facilities combined with grid provided electricity." Ex. 7. For over twenty years, MATEP performed under the Third Amendment and (until the purchase of MATEP by LEP) the AUC in a manner fully consistent with the Hospitals' understanding of comparability.

42. As a result, the Letter Agreement confirmed that, if electricity from PECO became "actually available," MATEP would charge Brigham & Women's the lower PECO rate for the period June 1, 1998 through February 28, 2001, and the amount that had been paid into escrow by Brigham & Women's would be refunded with interest. Ex. 6, Letter Agreement.

43. The Letter Agreement did "not change but only clarif[ied] the pricing terms agreed to by the parties" in the Third Amendment and original utilities contracts. Ex. 6, Letter Agreement.

44. Brigham & Women's and MATEP agreed upon a simple test to determine if electricity from PECO became "actually available." The parties agreed that the lower PECO rate

[6] Similar to the Third Amendment, while each institution had its own Letter Agreement, the agreements are virtually identical. Dana-Farber's Letter Agreement serves as an exemplar here.

would apply if PECO "*commenced* deliveries of electricity" by April 1, 1999 to the majority of a list of seven local hospitals. Ex. 6, Letter Agreement.

45. By March 25, 1999, PECO had "commenced deliveries of electricity" to these other local-area hospitals. On April 14, 1999, Brigham & Women's notified MATEP that PECO had "commenced deliveries of electricity" prior to April 1, 1999 and demanded release of its escrowed funds plus interest. Compl. ¶¶ 1, 16, *Dana-Farber Cancer Institute, Inc., v. MATEP LLC*, No. 9984CV04533 (Mass. Sup. Ct. Sept. 17, 1999), attached as Exhibit 8.[7] These escrowed funds represented the difference between the more expensive Boston Edison Company rate the Hospitals had been paying, and the lower rate the Hospitals owed MATEP under the Letter Agreement. Rather than release the funds as agreed, Defendants forced Brigham & Women's to litigate.

MATEP Loses in Prior Litigation Over Unjustified Electricity Charges

46. As justification for its refusal to release the escrowed funds, MATEP claimed that the competitive market did not make electricity "actually available," and therefore it did not need to provide electricity at the lower competitive market rate.

47. As a result, in the fall of 1999 Brigham & Women's initiated litigation against Defendants in the Suffolk Superior Court, Business Litigation Session before Judge van Gestel. The complaint sought money damages for MATEP's refusal to invoice the lower competitive market price for electricity.

48. The litigation centered on whether the competitive market provided electricity that was actually available to Brigham & Women's such that competitive market pricing should be used. At that time, MATEP conceded that the competitive market was comparable.

49. Indeed, MATEP has performed under the Third Amendment and (until its purchase by LEP) the AUC in a manner fully consistent with the Letter Agreement. MATEP did

[7] Similar to the Third Amendment and Letter Agreement, the institution's original complaints from the prior litigation were substantively identical. The complaint filed by Dana-Farber serves as an exemplar here.

not argue, and never argued until now, that electricity supplied by the competitive electric market was not comparable to the electricity supplied by MATEP.

50. This prior litigation was resolved at summary judgment in Brigham & Women's' favor. In a series of orders in 2001, and after appeal, in 2005, Judge van Gestel issued a number of factual findings and conclusions of law relating to the Third Amendment, the parties' negotiations in the late 90s leading up to the Third Amendment, and the comparability and availability of the competitive electric market in Massachusetts. Those orders are directly relevant here.

51. Judge van Gestel determined that a competitive market arose by April 1, 1999 and had "commenced deliveries of electricity" as contemplated by the agreement between the parties.

52. The competitive market's comparability was a predicate to Judge van Gestel's determination; otherwise, Brigham & Women's and the other Hospitals would not be permitted to use a competitive market price as a reference. Judge van Gestel recognized that MATEP conceded that delivery of electricity to Boston area hospitals was "comparable." Ex. 2, 2001 Decision at *5 n.6.

53. As Judge van Gestel recognized, "[i]mplicit, of course, in agreeing to the test of 'deliveries' to the designated hospitals is acceptance of the comparability issues, leaving only the 'real deal' versus 'financial deal' issue for resolution." Ex. 2, 2001 Decision at *2.

54. MATEP's acquiescence to the comparability of the competitive market underscored the central purpose of the parties in entering into the Third Amendment:

> The issue of comparability was in part ameliorated when it was learned that Massachusetts General Hospital, New England Medical Center and St. Elizabeth's Hospital were each signing up with PECO. To the extent comparability remained in play, it was swallowed up in the 'real deal' versus 'financial deal' debate.
> Ex. 2, 2001 Decision, at *2.

> The intentions of the user hospitals ... were to purchase electricity, steam and chilled water at the most effective market rate that would provide the necessary services and supply for those important entities.

Ex. 5, 2005 Decision, at *10.

55. The purpose of the Third Amendment was to "change the reference standard for setting electricity rates from just those charged by the sole, monopoly electric utility to those that might be charged by new entrants into a deregulated competitive market." Ex. 5, 2005 Decision, at *13.

56. Judge van Gestel also concluded that "the electricity pricing terms of the contracts unambiguously supported the hospitals' view of the proper contract price and summarily entered identical declaratory judgments in their favor." Ex. 5, 2005 Decision, at *1.

57. The Court identified contemporaneous communications between counsel for the parties elucidating the contractual arrangement – (i) "the rates payable by the user institutions should not be more than comparable rates the institutions would pay in an open market," and (ii) "[a]fter deregulation, the market might expand to include other suppliers, but the market price principle would remain, and the user hospitals pay whatever the market price was as a result of the competition of new suppliers." Ex. 5, 2005 Decision, at *5.

58. The Court concluded as follows:

> **Nothing could be more clear from the user hospitals' point of view than that they wanted to benefit from any lowering of electricity prices in a deregulated market**. If a competitive market opened up – as it did when PECO arrived – then the users wanted the reference standard for electricity pricing to be no longer [the regulated market] rates but, rather, the pricing in the competitive market.
> Ex. 5, 2005 Decision, at *12 (emphasis added).

59. The competitive market actually delivered electricity to Massachusetts General Hospital, New England Medical Center, and St. Elizabeth's Hospital. These entities were the "similar institutional and/or commercial users" used as comparators by the parties in the Third Amendment. The competitive market thus satisfied the comparability principle in the Third Amendment (and thus in the AUC).

The Pricing Provisions Have Remained the Same Since the 1990s

60. On September 30, 2015, MATEP and Brigham & Women's amended the Third Amendment and re-titled the document the Amended Utilities Contract or the "AUC." The AUC reiterated the same comparability and pricing provisions from the Third Amendment, which served as the basis for the prior litigation.

> Comparability. The Utilities to be provided pursuant to this Amended Utilities Contract are to be provided on the basis of pricing comparable to pricing available in a competitive market for levels of service comparable to that required to be provided by MATEP ….
>
> Consistent with the comparability principle set forth in subsection 1(c), the "applicable rate schedule" described in subsection 5(a)(i) shall be construed to mean Eversource's "G-3" filed tariff (or, if such tariff is no longer effective, the successor tariff most closely approximating the "G-3" tariff); provided, that:
>
> (A) when a competitive market arises in which alternative supplies of electricity at comparable levels of service with specifications and reliability standards at least equal to those provided in this Amended Utilities Contract are actually available …, then
>
> (B) the new reference standard shall be the price ... of such alternative supplies ….
>
> Ex. 1, AUC at 2, 10–11.

61. Under Section 1(c) of the AUC, MATEP is required to provide electricity "on the basis of pricing comparable to the pricing available in a competitive market for levels of service comparable to that required to be provided by MATEP."

62. Section 1(a) of the AUC requires MATEP to "provide continuous delivery" of the Hospital's requirements for electricity "7 days a week, 24 hours a day" (i.e., on a "firm, full requirements" basis). Under the AUC, MATEP is allowed to both produce that electricity in its plant or procure that electricity from either Eversource or the competitive market. Consequently, the test for comparability under the AUC (as Judge van Gestel previously concluded) is whether electricity is physically delivered by the competitive market on a "firm, full requirements" basis.

63. Engie and Axium, through LEP, acquired MATEP and the Plant in 2018. In so doing, Engie and Axium (through LEP) acquired MATEP's existing contractual obligations, including the 2015 AUC, its predecessor agreements (including the Third Amendment), and the attendant twenty-year course of dealing thereunder. At no point during the acquisition did LEP or its predecessor owners question or seek to re-negotiate the AUC with Brigham & Women's.

Brigham & Women's Designates a Reference Price that MATEP Unilaterally and Improperly Rejects, and MATEP Demands that Brigham & Women's Enter a New Contract

64. Brigham & Women's and the other Hospitals first designated a reference price in 1998 when they selected the price proposed by PECO. A reference price is a competitive market price for electricity that is actually delivered on a firm, full requirements basis to a building in the Longwood Medical Area with similar load characteristics to Brigham & Women's and the other Hospitals. Generally, a hospital has consistent load characteristics throughout the day, which allows the hospital to obtain electricity at potentially lower prices than other consumers in the competitive market because the pattern of usage is more predictable.

65. Since 2001, Brigham & Women's and the other Hospitals have used an exemplar building in the Longwood Medical Area with load factor characteristics comparable to that of Brigham & Women's and the other Hospitals to set the reference price for almost every calendar year.

66. As it had in prior years, on April 28, 2021, the Longwood Medical Energy Collaborative, Inc. ("LMEC") (acting on behalf of Brigham & Women's and the other Hospitals) notified MATEP that, pursuant to Section 5(a) of the AUC, the Hospitals were designating the reference price for electricity under the AUC for calendar years 2022 and 2023. Brigham & Women's and the other Hospitals, through LMEC, designated a reference price using the same exemplar building as prior years.

67. On January 26, 2022, MATEP notified LMEC that for the first time in over twenty years – without explanation or any change in circumstance – that MATEP did not accept

its designation of the reference price. A copy of MATEP's notice is attached hereto as Exhibit 9, ("MATEP's Notice").

68. MATEP asserted without support that the designated reference price does not adequately reflect the "comparability" provision of the AUC.

69. MATEP's rejection of the Hospitals' designated reference price upends nearly twenty years of MATEP's performance under the AUC, and violates the premise of Judge van Gestel's prior orders. In reality, the competitive market satisfied and continues to satisfy the comparability principle of the utilities contract. Indeed, if the competitive market did not satisfy the comparability principle, then both the AUC's pricing provisions and the parties' performance pursuant to those provisions from 1998 to the present would have been meaningless.

MATEP Unilaterally Imposes the Reliability Adder, Breaching the AUC

70. The AUC sets forth an objective standard that does not require the Hospitals to obtain MATEP's consent for their designation of a reference price.

71. MATEP now claims that any reference price designated by Brigham & Women's should only "serve as a base to which a [Reliability Adder] can be combined in order to arrive at a mutually agreeable Reference Standard Price." Ex. 9, MATEP's Notice.

72. To accomplish this, MATEP has requested that Brigham & Women's execute a new memorandum of understanding (the "MOU") (a copy of which is included in Exhibit 9, MATEP's Notice) in which the parties would establish the new "Reference Standard Price" (the "New Price") for electricity. Ex. 9, MATEP's Notice.

73. MATEP demanded that Brigham & Women's execute the MOU by February 28, 2022, or it would unilaterally charge the fabricated Reliability Adder. Ex. 9, MATEP's Notice; Letter from LMEC to Joe Dalton, President & CEO, MATEP LLC, dated Feb. 28, 2022, attached as Exhibit 10. "MATEP has demanded the Institutions execute the [MOU] by February 28, 2022. If the Institutions fail to do so, MATEP states that it unilaterally will establish the New Price by including in its invoices to the Institutions for Electricity a '[Reliability Adder] at the …

calculated 'Base Case' rate of $27.75/MWh effective as of January 1, 2022.'" Ex. 10 at 1, Letter from LMEC to Joe Dalton, President & CEO, MATEP LLC, dated Feb. 28, 2022.

74. Brigham & Women's refused: "[a]s has been the case since 1998, an [electricity supply agreement] which delivers electricity on a 'firm, full requirements' basis satisfies the 'comparable level of service' requirement in Section 5(a). The AUC does not require the Hospitals to obtain MATEP's consent for their designation of a Reference Price." Ex. 10 at 2, Letter from LMEC to Joe Dalton, President & CEO, MATEP LLC, dated Feb. 28, 2022.

75. Brigham & Women's issued a formal dispute notice and completed the dispute resolution process contemplated in the AUC. Ex. 10 at 2. The parties did not resolve the dispute, and Plaintiff now brings this suit to enforce the AUC.

76. Since January 2022, MATEP has billed the Reliability Adder to Brigham & Women's and the other Hospitals. The Hospitals paid these charges from January 2022 through May 2022. Thereafter, to facilitate dispute resolution, and pursuant to a series of agreements between the Hospitals and MATEP, MATEP forewent invoicing and collection of the Reliability Adder, and instead produced a statement that details the amount of the Reliability Adder that would have been (but was not) invoiced each month. Under those agreements, the Hospitals reserved their right to dispute the Reliability Adder, and MATEP reserved its right to invoice and collect the Reliability Adder (including the accrued foregone amount) if a settlement was not reached. On June 5, 2023, MATEP issued invoices to Brigham & Women's for the period from June 2022 through May 2023.

77. MATEP's actions breach the AUC and contradict the parties' over twenty-year course of conduct. Even worse, MATEP labeled its "Reliability Adder" as a "Utility Charge" under the AUC, which forced Brigham & Women's to remit payment during the pendency of the dispute. Ex. 1, AUC at 25.

78. Ultimately, the intent of the Reliability Adder was to force Brigham & Women's and the other Hospitals to negotiate a new contract with Defendants that would be substantially more advantageous to MATEP than the AUC.

79. MATEP, under the control of Engie and Axium (through LEP), refused to stop invoicing the Reliability Adder and refused to return the Reliability Adder payments paid in 2022 despite Brigham & Women's' repeated demands.

80. MATEP has deprived Brigham & Women's and the other Hospitals of their contractual right to avail themselves of competitive market prices for utilities.

81. MATEP's invoicing the Reliability Adder for electricity is not consistent with utility pricing practices, whether in the competitive electric market or elsewhere, and especially not under the AUC and its predecessor agreements (including the Third Amendment).

82. As of the filing of this Complaint, the total amount of the improperly assessed Reliability Adder (with interest) to the Hospitals is approximately $16,004,356.18. Brigham & Women's will have paid approximately $3,724,808.67 of this amount by timely remitting payment of the remaining balance.

MATEP Improperly Assesses Interest on the Fabricated Reliability Adder

83. On May 31, 2023, MATEP notified Brigham & Women's and the other Hospitals that it intended to assess and collect interest on the accrued balance of the Reliability Adder charges from June 2022 through May 2023 that it previously agreed to forego. Letter from Joe Dalton, President & CEO, MATEP LLC, to Gretchen May, President & Executive Director, LMEC, dated May 31, 2023, attached as Exhibit 11.

84. In connection with pre-litigation dispute resolution efforts, MATEP agreed to forego the invoicing and collection of the Reliability/Firmness Adder previously included on LMEC member Institutions' electricity and chilled water invoices. MATEP instead stated it would produce a separate statement as a reference to detail the monthly calculated value of the Reliability/Firmness Adder that MATEP otherwise would have invoiced.

85. Consistent with that agreement, the invoices noted that the Reliability Adder charges in each case were "0.000000" and that "Past Due Charges" total "$ .00."

86. The AUC only permits interest to be "charged with respect to all sums not paid by the due date" on the invoice. Ex. 1, AUC, § 5(e).

87. There is no basis for MATEP's assessment and collection of interest on a zero balance. MATEP's conduct further demonstrates its unfair and deceptive conduct in connection with assessing the Reliability Adder.

MATEP's Ulterior and Improper Motives

88. Engie and Axium (acting through LEP) acquired MATEP to promote their role as the supplier of electricity, steam, and chilled water to these world-renowned Hospitals to other potential customers. Engie and Axium thus leveraged Brigham & Women's and the other Hospitals' goodwill and reputation in order to bolster their own position with potential customers, clients, and investors.

89. The Engie website devotes a webpage to a "case study" of the Longwood Medical Area, and notes that "Harvard Medical School & Affiliated Hospitals are powered by ENGIE." ENGIE North America, *Case Studies: Harvard Medical School & Affiliated Hospitals are powered by Engie*, https://www.engie-na.com/case-studies/longwood/ (last visited June 8, 2023), attached as Exhibit 12.

90. Engie claims its services "enabl[e] LMEC's member hospitals and research centers to focus on their missions of patient care and advancements in medicine." Engie also states that the heating and cooling networks "provide LMEC with the most efficient, reliable, and cost-effective means of providing energy while improving sustainability. They are backed by ENGIE's risk management and performance guarantees, which give LMEC's member healthcare and research institutions peace of mind as they focus their efforts on world-class patient care and advances in medicine." Ex. 12.

91. Engie's claims that it provides a "cost-effective means of providing energy" to the Hospitals are false in that Defendants are deliberately depriving the Hospitals of the more cost-effective price for electricity that is actually available in the competitive market.

92. As shown otherwise by the filing of this Complaint, Engie's claims that it permits the Hospitals "to focus on their missions of patient care and advancements in medicine" and otherwise provides "peace of mind" are also false.

93. Engie and Axium were aware of the electricity pricing and other provisions of the AUC well before they (through LEP) acquired MATEP, and knew that the AUC did not utilize the "energy-as-a-service" concession model that was preferred by Engie and Axium for both financial and risk avoidance reasons.

94. Engie and Axium nevertheless acquired MATEP (through LEP), and rather than abide by the contract that was assumed upon acquisition, they have instead implemented a scheme that attempts to force Brigham & Women's and the other Hospitals (1) to pay more for electricity than required under the AUC or (2) to negotiate a new contract that would bestow substantial financial and operational benefits on MATEP (and thus on LEP, Engie, and Axium).

95. MATEP labeled the fabricated surcharge a "Utility Charge" in order to force Brigham & Women's to pay during the pendency of any dispute, thus demonstrating that the purpose of the Reliability Adder is to (1) obtain additional revenue that has no basis under the existing contract, and (2) to prematurely force negotiations of a new contract by over twenty-five years that would lessen MATEP's obligations and impose significant new financial obligations on Brigham & Women's and the other Hospitals.

COUNT I
Declaratory Judgment – Reliability Adder Invalidity

96. Brigham & Women's realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

97. For over 20 years, the parties' course of dealing demonstrates that a competitive, comparable markets exists.

98. Under the AUC, the existence of the competitive electric market outlines a clear pricing structure for the utility services Defendants provide to Plaintiff.

99. The AUC's pricing structure allows only for one of two prices: (1) the price available in the competitive electric market, or (2) the Eversource "G-3 tariff" rate.

100. The AUC's pricing structure contemplates no other price or pricing adder (such as the Reliability Adder).

101. Defendants unilaterally imposed the Reliability Adder on Brigham & Women's and the Hospitals. Doing so creates a controversy over the propriety of the Reliability Adder.

102. Brigham & Women's seeks declaratory relief declaring that the Reliability Adder is improper under the AUC.

COUNT II
Declaratory Judgment – Comparability

103. Brigham & Women's realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

104. For over 20 years, the parties' course of dealing demonstrates that a competitive, comparable markets exists.

105. Judge van Gestel reaffirmed in his 2001 and 2005 opinions that the competitive market made electricity "actually available." Thus, a competitive market existed under the contract starting in 1999.

106. That opinion concerned the Third Amendment. The same contractual provisions exist – almost verbatim – within the AUC.

107. Under the relevant contractual provisions, the existence of the competitive market outlines a clear pricing structure for the utility services Defendants provide to Plaintiff, and permits Brigham & Women's to designate a reference price.

108. MATEP unilaterally seeks to override the competitive market price that has been referenced by Brigham & Women's and the other Hospitals.

109. In so doing, MATEP created a controversy over whether a comparable competitive market exists such that the Brigham & Women's and the other Hospitals can avail themselves of the cheaper competitive market price for electricity.

110. Brigham & Women's seeks declaratory relief declaring, like the prior litigation, that a comparable competitive market exists, as well as reaffirming the existence of a competitive market such that Brigham & Women's can avail itself of lower competitive market pricing under the AUC.

COUNT III
Breach of Contract

111. Brigham & Women's realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

112. The AUC is a valid, written, and enforceable contract between Brigham & Women's and Defendants.

113. The AUC was made for valid consideration.

114. MATEP agreed to provide utility services to Plaintiff for the pricing as set forth in the AUC.

115. MATEP unilaterally imposed the "Reliability Adder" in January 2022 on Brigham & Women's, which has no basis in contract.

116. Brigham & Women's paid the "Reliability Adder" for five months under protest and with a full reservation of rights under the AUC in 2022. Brigham & Women's paid the "Reliability Adder" for five months under protest and with a full reservation of rights under the AUC in 2022, and any payment of the June 5, 2023 invoice issued by MATEP, which includes twelve months of Reliability Adder charges and interest, again will be made with a full reservation of rights.

117. MATEP breached the contract by imposing the Reliability Adder (and assessing and collecting interest) and mischaracterizing it as a "Utility Charge," enriching themselves by approximately $3,724,808.67 at Brigham & Women's' expense, thus depriving Brigham & Women's of its rights and the benefit of its bargain under the contract.

118. As a direct and proximate result of the foregoing, Brigham & Women's has suffered, and will continue to suffer, damages in an amount to be determined at trial.

COUNT IV
Breach of Implied Covenant of Good Faith and Fair Dealing

119. Brigham & Women's realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

120. The AUC contains an implied covenant of good faith and fair dealing, which Defendants breached.

121. The AUC was made for valid consideration.

122. MATEP agreed to provide utility services to Brigham & Women's for the pricing as set forth in the AUC.

123. MATEP breached the implied covenant of good faith and fair dealing by, *inter alia*, unilaterally adding and invoicing the "Reliability Adder" in January 2022 and mischaracterizing it as a "Utility Charge," which has no basis in contract, and assessing and collecting interest on "Reliability Adder" charges that it agreed to forego.

124. MATEP invoiced the extra-contractual Reliability Adder to Brigham & Women's in order to increase the profit margin of MATEP's owners – Engie and Axium, through LEP – and to obtain extra-contractual benefits from Brigham & Women's to which MATEP is not entitled.

125. MATEP fabricated the "Reliability Adder" and labeled it a "Utility Charge" in attempt to (1) obtain additional revenue that has no basis under the existing contract, and (2) prematurely force negotiations of a new contract by over twenty-five years that would lessen MATEP's obligations and impose significant new financial obligations on Brigham & Women's and the other Hospitals.

126. Brigham & Women's paid the "Reliability Adder" for five months under protest and with a full reservation of its rights under the AUC in 2022. Brigham & Women's paid the "Reliability Adder" for five months under protest and with a full reservation of rights under the AUC in 2022, and any payment of the June 5, 2023 invoice issued by MATEP, which includes twelve months of Reliability Adder charges and interest, again will be made with a full reservation of rights.

127. As a direct and proximate result of the foregoing, Brigham & Women's has suffered, and will continue to suffer, damages in an amount to be determined at trial.

COUNT V
Unjust Enrichment

128. Brigham & Women's realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

129. To date, Defendants have invoiced, and required Brigham & Women's to pay, approximately $3,724,808.67 as a result of the fabricated "Reliability Adder."

130. Brigham & Women's paid this Reliability Adder under protest for January 2022 through May 2022. MATEP now invoices and attempts to collect the Reliability Adder (and interest) from June 2022 to the present.

131. MATEP fabricated the "Reliability Adder" and labeled it a "Utility Charge" in an attempt to either (1) obtain additional revenue that has no basis under the existing contract, and (2) to prematurely force negotiations of a new contract by over twenty-five years that would lessen MATEP's obligations and impose significant new financial obligations on Brigham & Women's.

132. MATEP continues to retain the Reliability Adder amounts, and is unjustly enriched by continuing to invoice and retain these amounts as payment for utilities under the AUC.

133. As a direct and proximate result of the foregoing, Brigham & Women's has suffered, and will continue to suffer, damages in an amount to be determined at trial.

COUNT VI
Violation of Mass. Gen. Laws ch. 93A, § 11

134. Brigham & Women's realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

135. Defendants invoiced the extra-contractual Reliability Adder to Brigham & Women's in order to meet internal financial goals, and to extract extra-contractual benefits from Brigham & Women's to which Defendants are not entitled.

136. MATEP fabricated the "Reliability Adder" and labeled it a "Utility Charge" in an attempt to either (1) obtain additional revenue that has no basis under the existing contract, and (2) to prematurely force negotiations of a new contract by over twenty-five years that would lessen MATEP's obligations and impose significant new financial obligations on Brigham & Women's and the other Hospitals.

137. MATEP also charged interest on "Reliability Adder" charges that it agreed to forego, in violation of the plain language of the AUC.

138. Engie and Axium (through LEP) did not intend for MATEP to honor the AUC with Brigham & Women's. Rather, Engie and Axium intended to trade on MATEP's relationship with the Hospitals, as well as Brigham & Women's' goodwill, to improve their position in the energy-as-a-service market to attract new clients.

139. MATEP's foregoing acts, pattern, and practices constitute unfair competition and unfair and deceptive acts and practices under G.L. c. 93A.

140. MATEP's acts, pattern, and practices are willful and knowing, as MATEP knew or should have known that their acts, pattern, and practices were in violation of G.L. c. 93A, which is designed to protect the public from unfair and deceptive acts or practices.

141. MATEP's acts and practices occurred primarily and substantially within the Commonwealth of Massachusetts.

142. MATEP's acts and practices in violation of G.L. c. 93A have damaged Brigham & Women's.

143. Brigham & Women's is entitled to its costs, interest, attorneys' fees, and treble damages under the statute in amounts to be determined at trial.

JURY DEMAND

Brigham & Women's hereby requests a jury on all claims triable by jury.

WHEREFORE, Brigham & Women's prays that this Honorable Court:

A. Enter judgment in favor of Brigham & Women's and against Defendants on all of Brigham & Women's' claims, determine its damages and enter judgment against the Defendants in the amount of those damages together with interests and costs;

B. Award Brigham & Women's its reasonable attorneys' fees, costs, and interest;

C. As to Counts One and Two for declaratory relief, declare that: (i) the Reliability Adder is invalid under the AUC's pricing structure; (ii) the AUC pricing structure allows Brigham & Women's to designate a competitive market reference price for electricity; (iii) Judge van Gestel's 2001 judgment estops Defendants from asserting that a competitive, comparable market does not exist; (iv) Defendants' over twenty (20) year course of performance estops them from asserting that a competitive, comparable market does not exist; and (v) any other such relief as the Court may find just and equitable in the circumstances;

D. As to Counts Three, Four, Five, and Six, award damages to Brigham & Women's in an amount to be determined at trial against Defendants, including, but not limited to, all direct and consequential damages, punitive and/or multiple damages, $3,724,808.67 for the overpayment by Brigham & Women's to Defendants for the Reliability Adder, and interest;

E. Award such other and further relief as it deems just.

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.,
By its attorneys,

/s/ Jeremy M. Sternberg
Jeremy M. Sternberg (BBO # 556566)

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Dated: June 15, 2023

EXHIBIT 1

AMENDED UTILITIES CONTRACT

by and between

MATEP LLC

and

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.

dated as of September 30, 2015

AMENDED UTILITIES CONTRACT, dated as of September 30, 2015, between MATEP LLC, a Delaware limited liability company ("MATEP"), and THE BRIGHAM AND WOMEN'S HOSPITAL, INC. (the "User") (the "Amended Utilities Contract"), amending and restating in full the Restated Utilities Contract, dated as of October 31, 1997, by and between MATEP and the User (the "RUC"), as amended by the First Amendment, dated as of September 30, 2015 (the "First Amendment"), by and between MATEP and the User. MATEP and the User are sometimes referred to in this Amended Utilities Contract as the "parties."

INTRODUCTION

WHEREAS, MATEP, for its own use and the use of certain nonprofit hospitals and clinics (the "Hospitals and Clinics") with a teaching and research affiliation with the President and Fellows of Harvard College ("Harvard"), operates a total energy plant and related distribution system (the "Plant") in the Roxbury section of Boston. The primary purpose of the Plant is to replace an obsolete energy plant and to supply all the electricity, steam, and chilled water needs of the Harvard Medical School, Dental School and School of Public Health and those facilities of the Hospitals and Clinics which are located in the same geographic area of Boston;

WHEREAS, the User has extensive facilities located in the area capable of being served by the Plant and is or is the successor to one of the Hospitals and Clinics for whose use the Plant was designed and built;

WHEREAS, the RUC has been amended pursuant to the First Amendment; and

WHEREAS, the parties wish to restate in a single agreement the terms and conditions upon which the User and the other Current Users (as defined below) agree to take and pay for their electricity, steam and chilled water requirements from the Plant and the terms and conditions upon which MATEP agrees to cause the Plant to be operated to supply such requirements, by incorporating into this Amended Utilities Contract the RUC, the First Amendment, including *inter alia* the amendments of Schedules 1 and 2, the addition of Schedules 3 and 4, the amendment of Appendix A and the addition of Appendix J;

NOW THEREFORE, in consideration of the respective covenants, agreements, and conditions hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Basic Undertakings of MATEP.

(a) Reliability of Supply. MATEP acknowledges that a reliable supply of the User's requirements for Utilities is critical to the User. Accordingly, subject to the terms and conditions hereinafter set forth, MATEP shall, except to the extent prevented by a breach by the User of any of its material obligations under this Amended Utilities Contract or by Force Majeure: (i) provide continuous delivery of the User's requirements for each Utility to the User (7 days a week, 24 hours a day) up to the Committed Capability (for the combined demands of

all Current Users), and (ii) avoid non-delivery of such Utilities at any time.

(b) Priority of Supply. MATEP's obligation to provide the User's requirements for Utilities up to the Committed Capability (for the combined demands of all Current Users) as provided in this Amended Utilities Contract shall take precedence over any provision of steam, electricity, or chilled water to any Customer other than a Current User. MATEP shall have the right to provide steam, electricity, or chilled water to other Customers:

(i) on an as-available basis, to the extent the Committed Capability exceeds the combined demands of all Current Users; or

(ii) on a firm basis, to the extent that the actual capability of the Plant exceeds the Committed Capability (provided, that such excess capability shall not have been committed to the User pursuant to subsection 2(b)(i));

provided, that in either case, such sales do not interfere with the operations, capability, or reliability of the Plant or with MATEP's ability to serve the User.

(c) Comparability. The Utilities to be provided pursuant to this Amended Utilities Contract are to be provided on the basis of pricing comparable to pricing available in a competitive market for levels of service comparable to that required to be provided by MATEP pursuant to this Amended Utilities Contract, all as more specifically provided in this Amended Utilities Contract.

2. The Basic Undertakings of the User.

(a) Requirements. Subject to the terms and conditions hereinafter set forth, the User agrees that:

(i) the User will take from the Plant its total requirements for electricity, steam, and chilled water needed by its hospital or clinic facilities located in the geographic area served by the Plant to the extent the Committed Capability from time to time exceeds the combined demands of all other Current Users (Schedule 1 describes the existing facilities and other properties of the User located in the geographic area served by the Plant and specifically identifies any facilities, other properties, or parts thereof that will not acquire Utilities from the Plant);

(ii) the User will pay the applicable charges provided for in this Amended Utilities Contract. If the User expands its facilities by the acquisition of additional properties for which other utility service is already provided, the User may convert (but, to the extent of such existing service or any expansion of such service to cover additions or improvements to such additional properties, shall not be required to convert) those properties to take Utilities from the Plant. In all other instances, hospital or clinic facilities acquired or constructed by the User in the geographic area served by the Plant shall obtain Utilities from the Plant to the extent the Committed Capability from time to time exceeds the combined demands of all other Current Users. The User shall not be required to take any Utilities from the Plant for any User Expansion for which User's total requirements for all Utilities for such User Expansion cannot

be served by the Plant within the Committed Capability after giving effect to subsection 2(b)(iii)(D); and

(iii) the User will follow Prudent Operating Practices in the operations and management of its facilities and systems. For any User Expansion serviced by MATEP for which Expansion Operation Practices are required, the User agrees also to comply with such Expansion Operating Practices.

(b) Expansions. Notwithstanding the provisions of subsection 2(a), and without limiting the obligations of MATEP to maintain the Plant as provided in Section 6, or the obligations of the User under subsection 2(a):

(i) MATEP will not be obligated to undertake any Plant Expansions beyond the Committed Capability. Delivery of Utilities to meet any increase after October 31, 1997 in the User's requirements for any Utilities that cannot be served by the Plant without such Plant Expansion shall be upon terms and conditions mutually acceptable to the petitioning User and MATEP; provided, that no such Plant Expansion shall interfere with the ability of the Plant or the Eversource Tie Lines or, when constructed, the Back-Up Distribution System to meet the requirements of the other Current Users for Utilities immediately prior to such Plant Expansion. If, after good-faith negotiations, MATEP and the User do not reach agreement on such terms and conditions, then the User may thereafter obtain such additional requirements from "alternative suppliers" (i.e., third parties or self-generation) and, upon request of the User, MATEP and the User shall negotiate in good faith the terms of a wheeling or service agreement for interconnection of such alternative suppliers over and through the Plant and transmission or distribution of such additional requirements from such alternative suppliers, to the extent of available capacity at the Plant or the Eversource Tie Lines or, when constructed, the Back-Up Distribution System to effect such interconnection and transmission or distribution, all at rates and upon terms and conditions as MATEP and the User may reasonably agree; provided, that:

(A) if MATEP and the User cannot agree on the rates, terms, and conditions of service for inter-connection and transmission or distribution at the time the User requires the alternative supply of Utilities, then the User may elect to require interconnection and transmission or distribution over or through the Plant, to the extent of available capacity at the Plant to effect such interconnection and transmission or distribution, by notice to MATEP, whereupon (1) MATEP shall provide such interconnection and transmission or distribution service at the price specified by MATEP (the "Owner Price") until such time as the actual price may be determined pursuant hereto (the "Actual Price"); (2) the Actual Price shall be determined pursuant to the dispute resolution procedures of Section 15 of this Amended Utilities Contract (provided, that if construction of new interconnection or transmission or distribution facilities, or upgrades or expansions of existing interconnection or transmission or distribution facilities, is required to effect such interconnection and transmission or distribution service, then (x)

MATEP shall own and operate such interconnection or transmission or distribution facilities, and (y) the Actual Price shall not be less than the cost reasonably incurred by MATEP to construct, operate and maintain such interconnection and transmission or distribution facilities, including debt service and a reasonable return on equity, each amortized over a period reasonable under the circumstances), including any required incremental costs directly related to such interconnection or transmission or distribution facilities and those required incremental costs incurred by MATEP to maintain the Plant's operations, capability and reliability at the pre-interconnection level, and (3) if the Actual Price is less than the Owner Price, MATEP promptly shall remit the difference to the User plus interest thereon at the Interest Rate, or if the Actual Price is greater than the Owner Price, the User promptly shall remit the difference plus interest thereon at the Interest Rate; and

(B) in obtaining and transmitting or distributing such alternative supplies and in making such interconnection (including any such new interconnection or transmission or distribution facilities), the User and such alternative supplier shall not, and MATEP shall not be required to, interfere with the operations, capability, or reliability of the Plant or the Eversource Tie Lines or, when constructed, the Back-Up Distribution System or, subject to the rights of the User hereunder, with MATEP's ability to serve other Customers.

(ii) To the extent MATEP elects to undertake a Plant Expansion, such Plant Expansion (A) shall be at MATEP's sole cost and expense, including the cost of scheduled, partial shutdowns to interconnect the Plant to new Customers, and (B) shall not interfere with the operations, capability, or reliability of the Plant or the Eversource Tie Lines or, when constructed, the Back-Up Distribution System or with MATEP's ability to serve the User. MATEP and the User shall consult periodically, but no less than annually, concerning the actual capability of the Plant and future planned increases or decreases in the actual capability of the Plant, and MATEP shall give the User reasonable advance notice of significant increases or decreases in such actual capability. If requested by the User, MATEP and the User will negotiate in good faith regarding the possible purchase by the User of additional steam, electricity, or chilled water that are to become available by reason of a Plant Expansion; provided, that: (x) no party shall be obligated to sign a contract with respect to such Plant Expansion, and (y) nothing in this subsection 2(b)(ii) shall derogate from the User's rights under subsection 2(b)(i).

(iii) Without derogating from the rights or obligations of either the User or MATEP under subsections 2(a)(i), 2(a)(ii), 2(b)(i) or 2(b)(ii), the following provisions set forth

certain additional details regarding the respective rights and obligations of MATEP and the User with respect to User Expansions (notwithstanding the caption of this Section 2):

(A) When the User is planning the development of a potential User Expansion with requirements for Utilities which cannot be completely served by the Plant without a Plant Expansion, the User will provide MATEP with the estimated load parameters and utility service requirements for such User Expansion (the "User Expansion Specs") and offer MATEP the opportunity to supply Utilities to the User Expansion. The User shall be entitled to provide alternative User Expansion Specs at any time and from time to time. (Each of the User Expansion Specs delivered to MATEP hereunder with the opportunity for MATEP to make a proposal to supply utilities is sometimes referred to as "Delivered Expansion Specs"). MATEP shall have the right but not the obligation - in its sole discretion - to provide a good faith proposal to supply the Utilities to service the User Expansion with the level of Utilities specified in each of the applicable Delivered Expansion Specs. The parties shall discuss the proposal in good faith, with no party being bound to proceed. If, after good-faith negotiations, MATEP and the User do not reach agreement on such terms and conditions, then, subject to subsection 2(b)(iii)(B) below, the User may thereafter obtain such additional requirements from alternative suppliers and, upon request of the User, MATEP and the User shall negotiate in good faith the terms of a wheeling or service agreement for interconnection of such alternative suppliers over and through the Plant and transmission or distribution of such additional requirements from such alternative suppliers, to the extent of available capacity at the Plant or the Eversource Tie Lines or, when constructed, the Back-Up Distribution System to effect such interconnection and transmission or distribution, all at rates and upon terms and conditions as the User and MATEP may reasonably agree; provided, that subsection 2(b)(i)(A) and subsection 2(b)(i)(B) shall apply to any agreements or arrangements entered into by MATEP and the User pursuant to this subsection 2(b)(iii)(A).

(B) Notwithstanding anything in subsection 2(b)(iii)(A), the User may not obtain its requirements from alternative suppliers for any of the Utilities (as to which MATEP has made a prior proposal pursuant to subsection 2(b)(iii)(A)) for any User Expansion that is materially different (+/-25%) in terms of its User Expansion Specs from those set forth in any of the Delivered Expansion Specs sent to MATEP without first providing MATEP in writing another opportunity to which MATEP shall have the right to respond during the next twenty (20) Business Days by submitting

its proposal that responds to the materially revised User Expansion Specs.

(C) Any MATEP good faith proposal for Utilities services proffered for a User Expansion pursuant to subsection 2(b)(iii)(A) or subsection 2(b)(iii)(B) above may include (x) a condition that two or more Utilities must be taken and (y) a condition that Utilities service to the User Expansion (but not the User's facilities other than the User Expansion) is subject to Expansion Operating Practices; provided, that such bundling and Expansion Operating Practices are specified in detail at the time of MATEP's good faith proposal and not after the fact.

(D) If a proposal for a User Expansion includes the replacement of an existing User facility which is served Utilities by the Plant (the "Existing Facility") then in determining (pursuant to subsection 2(a)(ii) and subsection 2(b)(iii)) whether the total requirements for all Utilities for such new User facility can be served by the Plant within the Committed Capability, the amount of Utilities used by the Existing Facility (as determined by submetering if so submetered and otherwise by an engineering estimate of such utilization provided in good faith by the User) shall be included as unused capability, on a pro forma basis, within the Committed Capability.

(iv) In no event shall the electricity, steam and chilled water produced by any Plant Expansion increase the Committed Capability, unless MATEP and the Current Users agree on the terms and conditions therefor and enter into fully executed amendments to all Amended Utilities Contracts.

(c) Provision of Utilities.

(i) The User shall not, directly or indirectly, sell, resell, or otherwise provide any Utilities to any person except as may be agreed subsequently by MATEP and the User from time to time.

(ii) The provisions of subsection 2(c)(i) shall not be deemed to restrict (or to require MATEP's consent for) (A) provision by the User of Utilities delivered by MATEP to the User under the terms of this Amended Utilities Contract to the tenants, occupants, or other users of the buildings of the User otherwise served by MATEP under this Amended Utilities Contract, or (B) without limiting the assignment provisions set forth in Section 13, the sale by the User of one or more of such buildings to other third parties.

(iii) Notwithstanding the provisions of subsection 2(c)(i) and subsection 2(c)(ii), in making any provision of Utilities to any other person (including such tenants,

occupants, other users, or any other third parties), the User (A) shall comply with applicable law, (B) shall not take any action, or omit to take any action, that would cause MATEP to become regulated as a public utility, electric utility, or the like, under any applicable law, and (C) shall not, and MATEP shall not be required to, interfere with the operations, capability, or reliability of the Plant or the Eversource Tie Lines or, when constructed, the Back-Up Distribution System, or, subject to the rights of the User hereunder, with MATEP's ability to serve other Customers.

(d) The Eversource Tie Lines.

(i) As of October 31, 1997: (A) the Eversource Tie Lines are available to provide up to 30 MW of electrical capacity to the Users via the existing distribution system associated with the Plant; and (B) the full Tie Line Capacity is dedicated by Eversource to the provision of electricity to MATEP needed by the Plant or to deliver the Committed Capability to the Current Users, and that any capacity in excess of that needed by the Plant or to deliver the Committed Capability to the Current Users is dedicated to MATEP for the benefit of the Current Users.

(ii) As between MATEP and the Current Users, the Tie Line Capacity shall be available to the Plant and the Current Users for the provision of electricity under the terms and conditions of this Amended Utilities Contract at the same level of priority as that applicable to the provision of Utilities as set forth in subsection l(b).

(iii) Without limiting the provisions of subsection 5(a)(ii), MATEP shall not charge stand-by charges or reservation fees or the like to the User for such Tie Line Capacity unless and until (and only to the extent) such charges, fees, or the like are imposed on MATEP by Eversource, and then only to the extent such charges, fees, or the like relate to Tie Line Capacity in excess of that needed by the Plant or needed to deliver the Committed Capability to the Current Users. Should Eversource impose any such charges, fees, or the like with respect to such excess Tie Line Capacity, such charges, fees, or the like shall be apportioned equitably by MATEP among the User and the other Current Users benefitting from such excess Tie Line Capacity, and the User's portion of such equitable apportionment shall be paid monthly by the User pursuant to the provisions of subsection 5(d).

3. Specifications.

(a) Utilities Specifications. MATEP shall deliver the Utilities in accordance with the Specifications set forth in Appendix B, as measured at the main switchgear (in the case of electricity) and at the main header (in the case of steam and chilled water).

(b) Quality. Regardless of the Specifications, if the User identifies a problem in the quality of the steam, electricity, or chilled water supplied by MATEP, the User and MATEP shall cooperate to resolve the problem, including amending the Specifications in Appendix B if necessary; provided, that (i) no Specification shall be changed based on the User's request without prior consultation with the other Current Users; (ii) to the extent capital expenditures or additional operating costs are required for the Plant, the Dana-Farber Chiller, the HIM Chiller,

the Eversource Tie Lines or, when constructed, the Back-Up Distribution System to meet such amended Specifications when operated in accordance with this Amended Utilities Contract, such expenditures or costs amortized over a period reasonable under the circumstances, shall be borne by each of the Current Users if such expenditures or costs shall have been approved in advance by both a Majority of Current Users and two-thirds in number of the Current Users; and (iii) in the absence of such approval, such costs and expenditures shall be borne only by such Current Users as shall have approved such costs and expenditures.

(c) Out-of-Specification Deliveries. If MATEP determines that steam, electricity, or chilled water is not in compliance with the Specifications, MATEP shall immediately (i) notify the User and provide the details of the excursion or noncompliance, (ii) determine the cause of the excursion or non-compliance, and (iii) take immediate remedial action to bring the steam, electricity, or chilled water into compliance with the Specifications.

(d) Monthly Analyses. At MATEP's expense, MATEP shall conduct monthly chemical analyses of steam and chilled water samples at the Plant to ensure compliance with the Specifications and the other terms of this Amended Utilities Contract.

(e) No Expressed or Implied Warranties. Except as expressly provided in subsections 3(a) through 3(c) or in Appendix B to the RUC, MATEP makes no express or implied warranties with respect to the Utilities. This subsection 3(e) shall not serve to excuse any non-compliance by MATEP with the specifications for Utilities to the extent required by the terms of subsections 3(a) through 3(c) or Appendix B.

(f) Chilled Water and Satellite Chillers.

(i) In connection with Chilled Water service to the User, MATEP will: (A) provide an additional MATEP operator, whose primary responsibility would be the satellite chiller plants, (1) when satellite chiller plant equipment is not at full functionality or (2) on those days when outside ambient temperature/humidity is predicted by the U.S. National Weather Service to exceed 74°F (wet-bulb); (B) complete on or before March 1 of each year the regular preventative maintenance recommended for full functional performance of the satellite chiller plants (excluding weather-dependent preventative maintenance measures for cooling towers and other exterior chilled water equipment [collectively, the "Exterior Cooling Tower Equipment"]); and (C) complete the other regular preventative maintenance recommended for full functional performance of the Exterior Cooling Tower Equipment when weather permits, in MATEP's reasonable judgment, but in no event later than April 15 of each year.

(ii) MATEP and the User acknowledge that:

(A) If MATEP and the User, after consultation and discussion, agree to move forward with the installation of real time pressure and temperature monitoring equipment, which would provide data from split signals or other monitoring devices in the vicinity of the Chilled Water Delivery Points of those Current Users who may experience Delivery Point Pressure / Temperature

Differentials ("Delivery Point P/T Differentials"), MATEP and the User will do so on the mutually held assumption that the information provided by such monitoring equipment should allow MATEP to have additional indications of real time information at its main Plant control center of the onset of Delivery Point P/T Differentials and such indications may enable the MATEP to make more informed meliorative adjustments; and

(B) MATEP and the User, as part of the "O&M Report Discussion Meeting(s)" pursuant to subsection 6(l)(ii), shall regularly discuss at such meetings: (1) whether certain Current Users are experiencing greater Delivery Point P/T Differentials; (2) which locations for additional supply pressure monitoring devices on the Chilled Water loop could provide relevant early indications to MATEP's main Plant control center of Delivery Point P/T Differentials; and (3) to the extent available, meaningful and appropriate, whether data with respect to Delivery Point P/T Differentials suggest that MATEP should consider potential meliorative adjustments to the Chilled Water delivery system (if MATEP and the User agree that the installation of additional monitoring devices on the Chilled Water loop is prudent and will assist MATEP in assessing and implementing potential meliorative adjustments, MATEP will pay for the installation of up to six (6) additional monitoring devices in the aggregate for all Current Users);

provided, that in no event shall this subsection 3(f)(ii): (A) obligate either MATEP or the User to take any actions or make any other expenditures; or (B) affect the Prudent Operating Practices of either MATEP or the User.

(iii) Notwithstanding the foregoing, nothing in this subsection 3(f) shall (A) alter the location or the specifications for measuring Specifications compliance under Section 3 of this Amended Utilities Contract, or (B) alter MATEP's obligations to deliver Chilled Water under this Amended Utilities Contract.

4. Deliveries and Metering.

(a) Deliveries. Utilities will be delivered to the User at the delivery points at or adjacent to the User's facilities as described in Schedule 2. The User shall make arrangements to accept deliveries of utilities in accordance with the Specifications set forth in Appendix B. Chilled water shall be returned to the Plant at no less than 55 degrees Fahrenheit, steam condensate shall be returned to the Plant at a temperature of approximately 150 degrees Fahrenheit, and appropriate charges shall be imposed for material variations in the quantity or temperature of returned water or condensate as provided in subsection 5(d). The User will make its own arrangements for the distribution of its utilities requirements to its facilities

located in the geographic area served by the Plant from that delivery point. MATEP or its operating agent will maintain the distribution systems up to the indicated delivery point. Any distribution system components (other than metering equipment) on the User's side of the relevant boundary shall constitute the property of, and shall be the responsibility of, the User, whether or not such components were originally installed by the User or MATEP.

(b) Metering. MATEP and the User shall follow the requirements for maintenance, testing, and recalibration of meters, the procedures for reading meters, the procedures for correction of bills for inaccurate meter readings, and the other procedures set forth in Appendix F.

5. Utility Charge.

The User agrees to pay each month with respect to the preceding month a utility charge (the "Utility Charge") equal to the sum of the charges for electricity, steam and chilled water determined as follows.

(a) Electricity.

(i) During each month of the Term, the charge for electricity (the "Electricity Charge") shall be the dollar amount the User would have been required to pay to Eversource had the User acquired its electricity from that source instead of from the Plant. The amount that would have been paid to Eversource shall be determined on the basis of the User's demand and consumption from the applicable rate schedules actually in general use by customers of Eversource having demand and consumption characteristics similar to the User, as such schedules are from time to time amended, giving effect to all fuel charges, surcharges and other similar factors relevant to determining the dollar amount the User would have paid had it acquired its electricity from Eversource. During any period in which the Plant is unable to meet the User's total requirements for Electricity as a consequence of operating restrictions which prevent the Plant from achieving the Committed Capability, the Electricity Charge shall be the dollar amount the User would have been required to pay Eversource had all its Electricity actually consumed been obtained from Eversource that source less the actual amount paid to Eversource for that portion of the User's Electricity which was not obtainable from the Plant.

(ii) Consistent with the comparability principle set forth in subsection 1(c), the "applicable rate schedule" described in subsection 5(a)(i) shall be construed to mean Eversource's "G-3" filed tariff (or, if such tariff is no longer effective, the successor tariff most closely approximating the "G-3" tariff); provided, that:

(A) when a competitive market arises in which alternative supplies of electricity at comparable levels of service with specifications and reliability standards at least equal to those provided in this Amended Utilities Contract are actually available (such that, in the absence of this Amended Utilities Contract, the User, individually or through intermediaries, could contract for and obtain delivery of alternative supplies of electricity) under firm

(non-interruptible) agreements, and delivery to the User of such alternative supplies is not prohibited by law, then

(B) the new reference standard shall be the price, from time to time, of such alternative supplies; provided, further that such new reference standard shall include (without duplication) appropriate charges for applicable transmission and distribution costs and other costs (e.g., "stranded costs") associated with the re-structuring of the electricity market in Massachusetts as such transmission and distribution costs and other costs are charged to customers comparable to the User located in Eversource's service territory.

(iii) MATEP and the User acknowledge that the provisions of subsection 5(a)(ii) do not change but only clarify the pricing terms for electricity in subsection 5(a)(i) and subsection 5(c)(i)(A).

(iv) The Letter Agreement, dated February 26, 2007, as amended by this First Amendment to RUC (the "MASCO Letter Agreement") , by and between MASCO, on behalf of the Current Users, and Advanced Energy Systems, Inc., on behalf of MATEP, governing, inter alia, the export of power by MATEP through Current User Facilities (as defined therein) and the payment by MATEP to certain Current Users of 1.00 cent per kilowatt-hour of such exports (the "Export Charge"), shall continue in effect through the Term; provided, that:

(A) all references in the MASCO Letter Agreement to "MASCO" shall be deemed to be references to LMEC and all references to "BECO Tie Lines" shall be deemed references to "Eversource Tie Lines";

(B) load shedding protocols and related breaker coordination for MATEP's *DeMinimis* Exports and Additional Exports of power shall at all times be set consistent with subsection 1(b) of this Amended Utilities Contract and Sections 1 and 4 of the MASCO Letter Agreement such that if at any time the Plant's physical capacity to provide electricity to the Current Users falls below the Committed Capability for electricity, then the combined demands for electricity of all Current Users (up to the Committed Capability) shall take priority over (x) any export of electricity by MATEP and (y) any other MATEP actions which would have the effect of decreasing the reliability of electric, steam or chilled water service otherwise available to the Current Users; as used in this subsection 5(a)(iv), "the combined demands for electricity of all Current Users" shall include that electricity needed to generate the Committed Capability of Chilled Water; and

(C) subject to the other terms herein set forth (including MATEP's FCM Rebate obligations set forth in Appendix J), the scope of Additional Export shall be expanded beyond that set forth in the Distribution Agreement, dated February 15, 2007, referenced in the MASCO Letter Agreement, to include an additional gas turbine with a nameplate capacity of up to 16 MW (the "Gas Turbine") but not, without the Users' consent, any additional electricity-generating equipment beyond the Gas Turbine (and the User (1) hereby consents to the development, construction and interconnection of the Gas Turbine, (2) will not intervene in or protest in any proceedings relating to approvals to install or interconnect the Gas Turbine and (3) will not take any other action of an adversarial nature at FERC or any other proceeding, or in any other forum, to challenge the expansion of "Additional Export" to include power generated by the Gas Turbine).

A copy of the MASCO Letter Agreement is attached as Appendix I; all terms used in this subsection 5(a)(iv) and not otherwise defined in the Amended Utilities Contract shall have the meanings as referenced in the MASCO Letter Agreement.

(b) Steam.

(i) Steam Charge. Except to the extent that subsection 5(b)(ii) shall be applicable, during each month of the Term, the charge for steam (the "Steam Charge") shall be the sum of (A) $7,093.14 (representing the User's monthly share of the agreed annual cost of the steam line extension which would be required for Veolia to provide Steam), and (B) the dollar amount the User would have been required to pay to Veolia had the User been able to acquire its Steam from that source instead of from the Plant. The amount that would have been paid to Veolia shall be determined on the basis of the User's demand and consumption from the applicable rate schedules of Veolia, as such schedules are from time to time amended, giving effect to all fuel charges, surcharges, and other similar factors relevant to determining the dollar amount the User would have paid had Steam been available and the User been able to acquire its Steam from Veolia in the area of Boston now served by Veolia. If at any time during the Term Veolia shall cease to provide steam to a significant number of commercial enterprises in Boston pursuant to a generally applicable rate structure and fuel charge, the portion of the Steam Charge described in clause (B) above of this subsection 5(b)(i) for such month and for all subsequent months shall be derived from a rate structure and fuel charge determined as follows:

(X) all components of the rate structure other than the fuel charge used during the twelve-month period that immediately preceded such cessation (the "Subsection 5(b)(i) Base Period") in determining the Steam Charge (or, if any change occurred in any component during the Subsection 5(b)(i) Base Period which increased the Steam Charge, the rate structure as adjusted to reflect such change) shall become the base rate structure which thereafter shall be adjusted, upward or downward, as the case may be, for the first month and each succeeding month by the

change in the CPI; and

(Y) the average fuel charge per unit of steam used in computing the Steam Charge during the Subsection 5(b)(i) Base Period shall be adjusted, upward or downward, as the case may be, so that the fuel charge per unit of steam used in computing the Steam Charge for the first month and all subsequent months shall bear the same relationship to the Subsection 5(b)(i) Base Period fuel charge per unit of steam used as the average unit cost of fuel used by the Plant during such month bears to the average unit cost of fuel used by the Plant during the Subsection 5(b)(i) Base Period.

(ii) Alternative Steam Charge. The provision of steam is neither the primary business of Veolia nor a regulated business in Massachusetts. Accordingly, while the method of determining the User's Steam Charge set forth in clause (B) above of subsection 5(b)(i) currently appears to provide an equitable, long-term methodology, if increases or decreases in the Steam Charge attributable to the non-fuel component of such methodology (or the failure of that methodology to require increases or decreases) shall at any time provide aberrational results when measured against the rate and trend of change in the non-fuel component of the rate structure used by other companies providing steam on a commercial basis from fossil fuel-burning plants in other localities in a manner that is not offset by any special cost factors attributable to the Boston market, then a non-aberrational base rate composed of all non-fuel components of such methodology (the "Subsection 5(b)(ii) Base Rate") shall be determined in accordance with Section 15 and the Steam Charge shall thereafter be the sum of :

(A) $7,093.14,

(B) the Subsection 5(b)(ii) Base Rate, as adjusted, upward or downward, as the case may be, for the first month and each succeeding month following its determination by changes in the CPI, and

(C) a fuel charge determined by adjusting, upward or downward, as the case may be, the average fuel charge per unit of Steam used in computing the Steam Charge during the twelve-month period immediately preceding the determination of the Subsection 5(b)(ii) Base Rate (the "Subsection 5(b)(ii) Base Period"), so that the fuel charge per unit of steam used in computing the Steam Charge for the first month and all subsequent months following the determination of the Subsection 5(b)(ii) Base Rate shall bear the same relationship to the Subsection 5(b)(ii) Base Period fuel charge per unit of Steam used as the average unit cost of fuel used by the Plant during such month bears to the average unit cost of fuel used by the Plant during the Subsection 5(b)(ii) Base Period.

(c) Chilled Water.

(i) During each month of the Term, the charge for chilled water (the "Chilled Water Charge") shall be the sum of:

(A) the additional dollar amount the User would have been required to pay to Eversource for electricity if, in addition to the electricity requirements actually taken from Eversource, or from the Plant, as the case may be, the User met its requirements for chilled water from User-owned electric chillers and auxiliary equipment which consumed one and one-quarter (1.25) kilowatt hour of electricity for each ton-hour of chilled water required;

(B) a monthly operating charge of $118,851.44 for The Brigham and Women's Hospital campus, which sum shall be adjusted annually commencing as of October 1, 2015 and as of each October 1st thereafter to reflect changes in the CPI and the User's Maximum Available Capacity which occurred during the twelve months preceding each such October 1; and

(C) The User's then prevailing Capacity Charge.

(ii) As of the Amendment Effective Date, an initial monthly capacity charge was established for purposes of subsection 5(c)(i)(C) (the "Capacity Charge") at $116,559.50 on the assumptions that the User's maximum available capacity (the "Maximum Available Capacity") is 9,500 tons per hour and that the tons of Chilled Water actually taken by the User will not exceed the Maximum Available Capacity for any one-hour period or exceed eighty percent of the Maximum Available Capacity for more than three one-hour periods in any calendar month. The initial Capacity Charge shall be treated as the User's prevailing Capacity Charge until such date as the User's actual hourly consumption of Chilled Water shall at any time exceed the Maximum Available Capacity (except as a consequence of an aberrational non-recurrent incident) or exceed eighty percent of the Maximum Available Capacity for more than three one-hour periods in any calendar month, whereupon a new Capacity Charge and new Maximum Available Capacity shall be determined, which new Capacity Charge shall become the prevailing Capacity Charge until such time as the new Maximum Available Capacity shall again be exceeded (on either an absolute basis, except as a consequence of an aberrational non-recurrent incident, or by virtue of the peak one-hour demand exceeding eighty percent thereof for three one-hour periods in any calendar month) thereby requiring additional redeterminations of the Capacity Charge and Maximum Available Capacity. For purposes of the preceding sentence, an incident which causes the User 's peak one- hour demand to exceed the Maximum Available Capacity shall be deemed an aberrational non-recurrent incident only if the User advises MATEP of the basis for its conclusion that such incident is unlikely to reoccur and the User's peak one-hour demand does not again exceed the Maximum Available Capacity for any reason, whether or not similar to the foregoing, at any time during the sixty-day period immediately following such incident. Each time it shall become necessary to establish a new Capacity Charge and Maximum Available Capacity hereunder:

(A) The new Capacity Charge shall be determined by (1) dividing the higher of the User's actual peak one-hour demand or its previously prevailing Maximum Available Capacity by .80, then deducting the previously prevailing Maximum Available Capacity and rounding the result upward to the next one hundred ton amount to derive the incremental capacity needed (the "Incremental Capacity"), (2) multiplying the Incremental Capacity by $10.4123 (the June 1980 monthly cost per ton of incremental capacity), (3) adjusting the resulting dollar amount to reflect changes in the Handy Whitman Public Utility Electric Light and Power Construction Index (or if unavailable, a comparable index of generally applicable utility construction costs) to reflect changes in the cost of construction occurring subsequent to June 1980 and (4) adding the dollar amount so obtained to the previously prevailing Capacity Charge, and

(B) The new Maximum Available Capacity shall be determined by adding the Incremental Capacity determined under subsection 5(c)(ii)(A) to the previously prevailing Maximum Available Capacity.

(d) Chilled Water Return and Steam Condensate Return.

(i) Chilled Water. The monthly charge imposed by subsection 4(a) for the return of chilled water to the Plant at temperatures below 55 degrees Fahrenheit shall be determined by (A) multiplying the electricity component of the User's Chilled Water Charge described in subsection 5(c)(i) by a fraction, the numerator of which is the excess pumping energy required attributable to the additional water used as a consequence of such temperature variation (charged at 2 kilowatt hours per 1000 gallons of extra flow) and the denominator of which is the total kilowatt hours used in computing the User's Chilled Water Charge, and (B) multiplying the dollar amount derived pursuant to the immediately preceding clause (A) by the monthly weighting factor set forth below:

Month	Weighting Factor	Month	Weighting Factor
January	1.0	July-August	1.5
February	1.0	September	1.5
March	1.0	October	1.4
April	1.1	November	1.1
May	1.3	December	1.0
June	1.4		

(ii) Steam Condensate Return Temperature. The monthly charge imposed by subsection 4(a) for the return of steam condensate at temperatures averaging below 150 degrees Fahrenheit shall be determined by (A) multiplying the monthly average temperature (in degrees) of returned steam condensate below 150 degrees Fahrenheit by .001 (a ratio of the

measure of heat required per degree), (B) multiplying the product of the calculation made pursuant to the immediately preceding clause (A) by the monthly fuel adjustment cost for steam (expressed in dollars per 1000 pounds) and (C) multiplying the dollar amount derived pursuant to the immediately preceding clause (B) by the number of 1000-pound units of steam condensate returned to the Plant at temperatures below 150 degrees during the relevant month.

(iii) Steam Condensate Return Volume. The monthly charge imposed by subsection 4(a) for failure to return appropriate quantities of steam condensate shall apply where the steam condensate returned is less than 82 percent of send out and shall be determined by (A) multiplying the number of 1000-pound units of steam condensate below 82 percent of send out by 0.1 (a ratio of the measure of heat required to heat the additional water required by the Plant to 150 degrees Fahrenheit from the average temperature at which such water is acquired), (B) multiplying the product of the calculation made pursuant to the immediately preceding clause (A) by the monthly fuel adjustment cost for Steam (expressed in dollars per thousand pounds) and (C) adding to the dollar amount derived pursuant to the immediately preceding clause (B) the monthly cost per 1000 pounds of additional water required by the Plant and the monthly cost per 1000 pounds of demineralizing the additional water required by the Plant.

(e) Statements. MATEP will furnish statements to the User not earlier than the fifth day of each month for all amounts payable by the User with respect to the preceding month. Such statements will be rendered in such detail as the User may reasonably request and shall be subject to corrective adjustments in subsequent periods. Commencing not later than March 31, 2016, such statements will be rendered in such detail as the User may reasonably request and shall include all items marked with a check mark or a zero shown on Schedule 4 to this Amended Utilities Contract (and shall be subject to corrective adjustments in subsequent periods). All statements shall be due and payable in full on the twenty-fifth day following the date of issuance. Interest will be charged with respect to all sums not paid by the due date at the Interest Rate.

(f) Taxes. Whenever any sales tax or other similar tax shall be imposed by a governmental authority upon amounts charged for the Utilities provided by MATEP hereunder (excluding, however, (aa) any income tax or similar tax imposed against MATEP, (bb) any tax which, if the User (in the absence of this Amended Utilities Contract) were procuring, individually or through intermediaries, its utilities from an alternative supplier, would not be charged on the utilities from such alternative supplier, and (cc) any ad valorem tax on the Plant, including any tax under M.G.L. ch. 121A or equivalent successor statutes), the amount of such tax shall be paid by the User in addition to amounts otherwise charged for Utilities service in accordance with this Amended Utilities Contract; provided, that (x) the User shall have the benefit of any "grandfathering" available under applicable law and (y) the User's status as a not-for-profit corporation may be used to reduce or eliminate tax, as allowed by law. The User shall provide documentation and information supporting any exemption or exempt status to MATEP upon request by MATEP.

(g) Parity Among Current Users.

(i) If MATEP enters into a contract or other arrangement (including any amendment of a contract) with any other Current User for the sale or other disposition of steam, electricity, or chilled water to any such other Current User on terms and conditions materially more favorable in the aggregate than those set forth in this Amended Utilities Contract, then, at the User's option, MATEP and the User shall amend this Amended Utilities Contract to incorporate into this Amended Utilities Contract substantially the terms and conditions of such new contract or amendment as a whole.

(ii) MATEP shall give the User notice within 30 days after entering into any contract, amendment, or other arrangement with any other Current User for the sale or other disposition of steam, electricity or chilled water, together with a brief description of the terms and conditions and a copy of the documentation setting forth such terms and conditions. If the User elects to incorporate such terms and conditions, MATEP and the User shall meet within 30 days of delivery to the User of such notice from MATEP, and the parties shall use good faith efforts to reach agreement on such terms and conditions, and to conclude final documentation, within 60 days of delivery to the User of such notice from MATEP.

(iii) The provisions of this subsection 5(g) shall not apply to (A) contracts or other arrangements for supply, transmission, distribution or interconnection by MATEP with respect to steam, electricity, or chilled water obtained from alternative suppliers as contemplated by subsection 2(b)(i), (B) provision of steam, electricity, or chilled water by MATEP from Plant Expansions or for User Expansions after October 31, 1997 as contemplated by subsection 2(b)(ii) and subsection 2(b)(iii), or (C) any Back-Up Distribution System constructed after October 31, 1997 to serve another Current User similar to that contemplated by subsection 6(b).

(h) Payments Available from Non-MATEP Utility Suppliers.

(i)

(A) Pursuant to regulations, rules, orders and the like (collectively, whether or not so designated, "Tariffs") promulgated from time to time by the Massachusetts Department of Public Utilities or its successor or equivalent agencies (collectively, "DPU"), Eversource and other non-MATEP utility suppliers (collectively, "Non-MATEP Suppliers") may from time to time (1) collect payments from customers in respect of energy efficiency, conservation and other similar programs and policies to which such Tariffs relate (collectively, "Tariff-Related Programs") and (2) make available rebates, reimbursements or other payments (collectively, "Rebates and/or Payments") under such Tariff-Related Programs to direct or indirect customers of the Non-MATEP Suppliers or other eligible recipients, potentially including the Users.

(B) If and to the extent any Non-MATEP Supplier is involved in a Tariff–Related Program for which the User by means of a User-

sponsored project (i.e., where project is funded by capital provided by Users and is located on the User side of the MATEP Utilities delivery points) or other similar User activity under the Tariff-Related Program would be eligible (including any Tariff-Related Program which treats utilities supplied by MATEP under the Amended Utilities Contract as provided by the Non-MATEP Supplier), and the User notifies MATEP of the User's desire to obtain Rebates and/or Payments pursuant to such Tariff-Related Program, MATEP will use commercially reasonable efforts to cooperate with the User in facilitating the User's obtaining such Rebates and/or Payments from the Non-MATEP Supplier, subject to satisfaction of the following conditions (clauses (1) through (6), collectively, the "Rebate Cooperation Conditions"): (1) the Rebates and/or Payments shall be monies coming from the Non-MATEP Supplier and not from MATEP; (2) if MATEP's participation in or facilitation of any such Tariff-Related Program requires that MATEP pay any costs, expenses or administrative fees to Eversource or any other Non-MATEP Supplier (other than costs, expenses or administrative fees MATEP is paying irrespective of any User's application for, or receipt of, Rebates and/or Payments under the applicable Tariff-Related Program), the User shall, promptly upon invoice therefor by MATEP, reimburse all such costs to MATEP irrespective of the User's share; provided, that MATEP shall in no case collect from all Current Users in the aggregate more than one hundred (100%) percent of such costs, expenses or administrative fees; (3) if any engineering or professional analysis and/or certification (collectively, "Certification") is required by the Non-MATEP Supplier in order for the User to obtain such Rebates and/or Payments, the procurement and cost of the engineering or other third-party professional services (collectively, "Professional Consultancy") shall be done by and paid for entirely by the User without any such costs being imposed on MATEP; (4) every Professional Consultancy regarding matters relating to the Plant or its supply of Utilities to the User shall, if required by MATEP, be obligated to execute a Confidentiality Agreement in the form of Appendix H; (5) any Certification prepared by the Professional Consultancy shall, to the extent such Certification relates to the Plant or its supply of Utilities to the User, be subject to MATEP's prior approval consistent with this subsection 5(h), such approval not to be unreasonably withheld, delayed or conditioned; and (6) MATEP's participation in the Tariff-Related Program cannot necessitate the imposition of operating conditions which, if implemented, would adversely affect the reliability of the Plant or its operations.

(C) Notwithstanding the foregoing, but nevertheless subject to the satisfaction of the Rebate Cooperation Conditions, if the User requests (1) that MATEP participate in a Tariff-Related Program in which MATEP is not already participating or (2) that MATEP participate in a Tariff-Related Program in a materially different way than MATEP has previously participated, and either (1) or (2) would necessitate the imposition of modifications to MATEP's operations in a manner which would result in MATEP's incurring additional operating expenses (the "Additional Operating Expenses"), then MATEP shall be entitled to decline such User-requested participation in such Tariff-Related Program unless the User, either individually or together with one or more other Current Users, after notice from MATEP of the Additional Operating Expenses, elects, in its sole discretion, to pay MATEP such Additional Operating Expenses.

(ii) In furtherance of subsection 5(h)(i) and without derogating therefrom, MATEP and the User acknowledge subsection 5(c)(i)(A) of the Amended Utilities Contact specifies the algorithm for calculating the amount of electricity utilized for the production of each ton hour of chilled water to be one and one-quarter (1.25) kilowatt hours of electricity for each ton hour of chilled water, which is an agreed, rather than actual, conversion factor.

If and to the extent any Non-MATEP Supplier requires a Certification as to the actual electrical-mechanical conversion ratio for MATEP's Chilled Water equipment ("Conversion Certification") in order to enable the User to obtain Rebates and/or Payments under any Tariff-Related Programs relating to the electricity component of Chilled Water, MATEP will use commercially reasonable efforts to cooperate with the User in facilitating the Users' provision of such a Conversion Certification in order for the User to obtain such Rebates and/or Payments from the Non-MATEP Supplier subject to the Rebate Cooperation Conditions.

Notwithstanding any provision of this Amended Utilities Contract to the contrary, nothing in subsection 5(h) or actions taken pursuant thereto shall alter or be deemed to modify subsection 5(c)(i)(A) or the 1.25 conversion factor contained therein which shall remain unchanged and in full force and effect for the Term.

(i) Hedging. MATEP and the User acknowledge and confirm (A) they have in the past and are currently engaged in hedging programs for electricity and the fuel component of steam pursuant to separate hedging agreements (collectively, the "Hedging Agreements"), and (B) nothing in this Amended Utilities Contract shall be deemed to (aa) alter the rights or obligations of either MATEP or the User with respect to the Hedging Agreements, or (bb) restrict the parties under the Amended Utilities Contract from engaging in future hedging agreements.

6. Operation and Maintenance of the Plant.

(a) Operating and Maintenance Standards. MATEP:

(i) shall operate and maintain the Plant so as to be capable of meeting the obligations of MATEP under this Amended Utilities Contract and in compliance with Prudent Operating Practices, the operating manuals, the safety requirements of the Plant's insurers, and applicable industry codes, as each may be in effect from time to time;

(ii) shall provide all materials and supplies, equipment, tools, utilities, spare parts, fuel, personnel, things, and services necessary for MATEP to operate and maintain the Plant and otherwise to provide the Utilities in accordance with this Amended Utilities Contract; and

(iii) shall maintain at the Plant at all times such materials and supplies, equipment, tools, utilities, spare parts, fuel, personnel, things, and services necessary in accordance with the standards set forth in subsection 6(a)(i) to operate and maintain the Plant in accordance with such standards.

(b) Back-Up Distribution System. MATEP shall cooperate with the User in arranging for an engineering assessment, which shall be conducted at the expense of the User, of the technical and financial feasibility of constructing and operating a Back-Up Distribution System so as to enhance the redundancy and reliability of the Plant's electrical service. If the User agrees to proceed with the construction and operation of the Back-Up Distribution System, all costs of such construction and operation shall be at the expense of the User (including capital and operating costs). MATEP shall cooperate with and assist the User in constructing or causing the construction of such Back-Up Distribution System, including in seeking regulatory approvals, third-party consents, and rights-of-way, and in interconnecting the Back-Up Distribution System. MATEP shall operate the Back-Up Distribution System in conjunction with its operation of the Plant for the provision of electricity (up to the Committed Capability) at the User's expense. The User shall be entitled to utilize the Back-Up Distribution System at its expense for transmission of electricity obtained from alternative sources as contemplated by subsection 2(b)(i) or subsection 21(c). The availability of such Back-Up Distribution System shall not relieve the User of its obligation to purchase electricity supplied by MATEP (up to the Committed Capability) as set forth in this Amended Utilities Contract.

(c) Alternative Sources of Utilities.

(i) MATEP may, at its option, obtain Utilities from sources other than the Plant (including Eversource, the Dana-Farber Chiller, or the HIM Chiller) to meet its obligation to provide Utilities under this Amended Utilities Contract; provided, that the provisions of this subsection 6(c)(i) shall not be construed to relieve MATEP of its obligation to operate and maintain the Plant as provided in subsection 6(a) or of any other obligation under this Amended Utilities Contract.

(ii) The User hereby designates MATEP as its agent for obtaining delivery to the User of alternative sources of steam, electricity, or chilled water, including electricity delivered through Eversource Tie Lines or through the Back-Up Distribution System; provided, that with respect to steam, electricity, or chilled water obtained from alternative suppliers as contemplated by subsection 2(b)(i), such agency (A) with respect to electricity shall be for

purposes of allowing MATEP to function in the role of operator of the interconnected electric distribution system (subject to the priorities to be specified in the emergency response plan in the event of curtailment, as contemplated by subsection 6(d)), (B) shall not preclude the User from separately negotiating rates with such alternative suppliers for the User's requirements for Utilities in excess of the Committed Capability, and (C) shall not be construed to relieve MATEP of its obligation to provide the User's requirements for Utilities, up to the Committed Capability, as provided in Section 1 or the User of its obligation to purchase such requirements for Utilities, up to the Committed Capability, as provided in Section 2.

(iii) The User from time to time shall execute, acknowledge, record, register, deliver, or file all such notices, statements, instruments, and other documents, and take such other steps, as may be necessary or advisable to permit MATEP to carry out its obligations with respect to delivery of such alternative sources of Utilities (including operation of any such distribution system).

(d) Outage Response.

(i) MATEP shall prepare a vulnerability study and a comprehensive emergency response plan that identifies critical elements, sources of alternative supply of Utilities, and recovery procedures for outages. The emergency response plan shall be submitted to the User for review and comment and will address such matters as the allocation of deliveries of each Utility during shortages (or during restoration of services) among different types of Utility service and among particular uses at the various other Customers.

(ii) The emergency response plan shall provide that, during any general curtailment of Utilities by MATEP, MATEP shall provide any available dispatch to the critical facilities of the Current Users as a first priority. The emergency response plan shall be reviewed and updated periodically as appropriate.

(iii) If an emergency or outage occurs, MATEP shall immediately (A) notify the User and confer with the User concerning steps to be taken to restore Utilities service, (B) obtain an alternative supply of Utilities to avoid non-delivery of Utilities to the User, and (C) commence measures to remedy the emergency or outage.

(e) User Inspection. The User, together with the other Current Users, shall have the right during business hours up to twice each calendar year or after an event which materially adversely affects the operation of the Plant and adversely affects MATEP's delivery of the Utilities in accordance with the Specifications (i) to inspect the Plant, (ii) subject to the following provisions of this subsection 6(e), to inspect those operating and maintenance records and data of MATEP as set forth in Schedule 3 and (iii) to meet with the appropriate Plant and operator personnel. MATEP shall cooperate with the User regarding such inspections, which shall be subject to reasonable advance notice of date, time and the purpose and scope of such inspection and shall also be subject to appropriate safety and security standards. Such inspections shall be permitted only for proper business purposes relating to the Users' operational, regulatory and accreditation requirements which include, without limitation, assessing operational reliability of the Plant. During such inspection, the User shall be entitled

to access MATEP's operation and maintenance records and data as set forth in Schedule 3; provided, that the User shall at all times be subject to the confidentiality obligations set forth in Section 24; and further, provided, that any non-User to whom the disclosure is to be made has signed in advance a Confidentiality (Non-Disclosure) Agreement substantially in the form of Appendix H. Such inspection rights of the User shall not include the right to review MATEP's financial records, except as may be necessary to verify billing statements rendered to the User.

(f) MATEP Inspection. MATEP shall have the right during business hours up to twice each calendar year or after an event involving the User's Utilities-related facilities (i.e., those facilities of the User which connect or directly interact with MATEP's Plant at the point of utility service interface for the delivery of the Utilities) which has materially adversely affected the operations of the Plant: (i) to inspect the Utilities-related facilities of the User, (ii) to inspect the operating and maintenance records of the Utilities-related facilities of the User and (iii) to meet with appropriate operations personnel of the Utilities-related facilities of the User, in each case for proper business purposes relating to the operational, regulatory or accreditation requirements of MATEP. The User shall cooperate with MATEP regarding such inspections, which shall be subject to reasonable advance notice of date, time and the purpose and scope of such inspection and shall also be subject to appropriate safety and security standards. Such inspections rights of MATEP (A) shall not include the right to review confidential or proprietary information of the User unless a Confidentiality (Non-Disclosure) Agreement substantially in the form of Appendix H has been signed in advance and (B) shall not include the right to review the User's financial records.

(g) Operating Audits. The User, together with the other Current Users, shall have the right once every three (3) calendar years (and additionally after an event which materially adversely affects the operation of the Plant and adversely affects MATEP's delivery of the Utilities in accordance with the Specifications) to request, at their sole cost and expense, an engineering review by the Audit Engineer of the operation and maintenance of the Plant covering the period since completion of the last such engineering review; provided, that (i) the first engineering review after the Amendment Effective Date shall relate back to the User engineering review report issued in 2011 and (ii) the User will not request that the first engineering review be started prior to June 1, 2016. Such engineering review shall be permitted only for proper business purposes relating to the Users' operational, regulatory and accreditation requirements which include, without limitation, assessing operational reliability of the Plant. During such engineering review, the Audit Engineer shall be entitled to access to MATEP's operation and maintenance records and data as set forth in Schedule 3; provided, that the Audit Engineer has signed in advance a Confidentiality (Non-Disclosure) Agreement substantially in the form of Appendix H. MATEP shall cooperate with the Audit Engineer, including (i) providing access during normal business hours to the operating and maintenance records and data of the Plant, as set forth in Schedule 3, and (ii) arranging meetings with appropriate Plant and operating personnel consistent with Schedule 3. MATEP will be provided a copy of the final draft of the audit prior to its issuance for review in order to provide, within fifteen (15) Business Days of delivery of the final draft, any clarifications and comments to the final draft. Any such clarifications or comments will be so identified and responded to in good faith, and the User shall cause the Audit Engineer to note and incorporate such items (and, where applicable, their resolution) into audit report as issued.

(h) Energy Efficiency; Consultations re Current and Anticipated Requirements.

(i) The User shall have the unrestricted right to engage in energy efficiency, conservation or similar measures; provided, that the User shall not have the right to engage in self-generation to meet its requirements for steam, electricity, or chilled water, except to the extent that, as set forth in subsection 2(b)(i), such requirements exceed the Committed Capability (at the time the particular self-generation project is considered).

(ii) The User shall consult with MATEP periodically, but not less frequently than once per calendar year, concerning the User's current and anticipated requirements for steam, electricity, and chilled water. The User also shall provide reasonable advance notice to MATEP of the User's intentions with respect to significant anticipated increases or decreases in the User's requirements and with respect to any such significant anticipated energy efficiency, conservation or similar measures.

(i) Site Security.

(i) MATEP shall maintain appropriate site security measures, including the following:

(A) maintaining access control at all entrances to the Plant;

(B) performing periodic inspection tours of the Plant to monitor conditions related to security;

(C) coordinating security measures with the emergency response plan; and

(D) preparing and implementing detailed security policies and procedures, including but not limited to access, entry, and escort procedures, maintenance of security systems, and policies regarding firearms, explosives, and regulated substances.

(ii) MATEP shall periodically review site security measures in consultation with the User and shall notify the User of all security measures and policies.

(j) Interruptions. Interruptions or reductions in service for inspection, maintenance, alterations and other similar events will be scheduled in accordance with Prudent Operating Practices and insofar as practicable shall be mutually agreed upon by MATEP and the User. In the event of an interruption or reduction, MATEP will use best efforts to restore the Plant to full service as promptly as practicable.

(k) Subcontracting. MATEP may employ persons of appropriate capability to operate and maintain the Plant as independent operating agents responsible to MATEP, but such employment shall not relieve MATEP of any obligation or liability hereunder.

(l) Consultation and Planning.

(i) MATEP and the User shall consult on a periodic basis, but at least once each calendar year, as to each party's operational issues, including emergency events, maintenance programs for the coming period and other matters affecting the capability or reliability of the Plant, to insure a coordinated approach, if possible, but recognizing MATEP's priority (subject to subsection 1(a), subsection 1(b) and Section 6) in any proposed Plant maintenance activities and any proposed changes to Plant emergency response procedures. The party experiencing an emergency event with respect to the Plant or Utilities-related facilities, as the case may be, shall provide details as to root cause analysis, impact and remedy to mitigate the occurrence of such an event in the future.

(ii) MATEP shall send written reports (the "O&M Reports") to the User not later than each December 31 and June 30 of each year during the Initial Term, summarizing operating and maintenance activities relating to the Plant for the previous six-month period ending 60 days prior to the date of such report (and, as applicable, the nine months succeeding the date of the period referenced in such report). The O&M report will include updates with respect to the following matters for the reported period: (A) plant performance, including any emergencies; (B) maintenance activities (including, separately, preventive maintenance and curative maintenance) and expected maintenance for the next nine-month period, including planned outages of equipment; (C) equipment and distribution line switchovers; (D) expansions of the Plant; (E) major overhauls or material repairs and other material capital projects; (F) update as to any changes or suggested changes to the established emergency response procedures or operating procedures related to the User's utility interface; (G) environmental orders, rules or regulations or other regulatory events affecting the capability or reliability of the Plant; (H) health/safety performance for the period; (I) significant changes in staffing levels, operations or operating procedures; (J) all material issues raised in the last audit pursuant to subsection 6(g); and (K) any other matters materially affecting the capability or reliability of the Plant. Within 30 days of the issuance of an O&M Report, representatives of MATEP and representatives of the User (who may include representatives of LMEC) shall meet at a mutually convenient time and place to discuss the O&M Report (the "O&M Report Discussion Meeting(s)"; if MATEP desires to discuss at such meeting(s) any concerns regarding the operations of the Utilities-related facilities by any of the Users, MATEP shall provide a summary of its concerns when MATEP delivers the O&M Report; the Current Users shall prepare to discuss MATEP's questions and concerns at the O&M Report Discussion Meeting(s). All Confidential Information of the User and all Confidential Information of MATEP shall be subject to the provisions of Section 24.

(iii) Beginning not later than three (3) months following the Amendment Effective Date, MATEP shall facilitate the User's ongoing access to a data warehouse on-line system to the extent necessary to make available to the User the User's historic usage data for the prior three (3) calendar years.

7. Failure to Pay Utility Charges.

Prompt payment of all Utility Charges is essential to MATEP's ability to continue to

serve the User and other persons acquiring utilities from the Plant. The User shall be in default with respect to its obligations under this Amended Utilities Contract if as of the end of any month, the User shall have failed to pay in full, after notice and opportunity to cure as provided in subsection 10(a)(iii)(B), all Utility Charges that may then be due hereunder together with all accrued interest. In the event of such a default by the User, MATEP shall have the right without releasing the User from its continuing obligations, and in addition to all other remedies available under existing law for breach of this Amended Utilities Contract, to terminate all or any portion of the Utilities provided to the User upon sixty (60) days' prior written notice notwithstanding the provisions of Section 15. MATEP shall be required to resume service from the Plant following a termination or reduction in service occasioned by an Event of Default of the User (as specified in subsection 10(a)(iii)(B)) only if such default shall have been fully cured within the six-month period following the date of the aforesaid notice.

8. Cooperation on Legal Matters.

MATEP and the User will cooperate with each other, to the extent that such cooperation is not inconsistent with advice provided by their respective counsel, in all legal, administrative, regulatory and other proceedings that have a direct bearing on the ability of MATEP and the User to perform their obligations under this Amended Utilities Contract or that may affect the total cost of the design, construction, or operation of the Plant.

9. Force Majeure.

(a) Definition of Force Majeure. The term "Force Majeure" as used herein shall have the meaning assigned to such term in Appendix A.

(b) Effect of Force Majeure. If because of Force Majeure, affecting either MATEP or its operating agents, MATEP is unable to carry out its obligations under this Amended Utilities Contract in whole or in part, it shall give the User notice of such Force Majeure at the earliest reasonable date and the obligations of MATEP and the User shall be suspended to the extent made necessary by such Force Majeure and during its continuance. MATEP shall cooperate with the User in mitigating the effect of any interruption in service but shall have no liability to the User or any person claiming through or under the User on account of any injury, loss, damage, or liability in any way attributable to or arising from such Force Majeure.

(c) Economic Hardship. Economic hardship, including the price that MATEP receives for Utilities and MATEP's costs for fuel, for backup, maintenance, or supplemental power, or for other steam, electricity, or chilled water obtained from alternative sources, shall not be considered Force Majeure. Cost increases of MATEP due to Force Majeure shall not be passed through to the User.

(d) Backup Deliveries.

(i) Without limiting the generality of subsection 9(b) or subsection 9(c), MATEP's obligation to supply Utilities under this Amended Utilities Contract shall not be excused for Force Majeure except to the extent that Force Majeure has excused (A) the inability of the Plant to deliver Utilities, and (B) the unavailability of alternative sources of Utilities,

including the Dana-Farber Chiller, the HIM Chiller, the Eversource Tie Lines and, upon its completion, the Back-Up Distribution System, for any reason beyond the control, and not caused by the fault or negligence, of MATEP or its agents or affiliates.

(ii) Nothing in subsection 9(d)(i) shall be construed (A) to require MATEP to deliver electricity from alternative sources in excess of the capacity of the Eversource Tie Lines or the capacity of the Back-Up Distribution System upon its completion, as the case may be, as each may be expanded or upgraded from time to time, or (B) to excuse the unavailability of alternative sources of Utilities to the extent caused by the failure of MATEP to contract for firm supply and delivery of such alternative sources of Utilities consistent with the requirements of subsection 6(a).

10. Default and Remedies; Cancellation or Suspension.

(a) Events of Default.

(i) An Event of Default by MATEP shall occur hereunder if:

(A) any Deficiency (except to the extent caused by Force Majeure) continues for longer than 336 cumulative hours in any one-month period or 672 cumulative hours in any twelve-month period;

(B) Liquidated Damages paid or payable by MATEP at any time pursuant to subsection 10(b) exceeds $500,000;

(C) MATEP (1) shall (a) institute a voluntary case or similar proceeding seeking liquidation or reorganization under the United States Bankruptcy Code or any applicable law, or shall consent to the institution of an involuntary case or similar proceeding thereunder against it, (b) apply for, or suffer the appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers, (c) make an assignment for the benefit of creditors, or (d) admit in writing its inability to pay its debts generally as they become due; or (2) an involuntary case shall be commenced seeking the liquidation or reorganization of MATEP under the United States Bankruptcy Code or any similar proceeding shall be commenced against MATEP under any other applicable law, and (a) the petition commencing the involuntary case is not timely controverted or is not dismissed within 60 days of its filing, (b) an interim trustee is appointed to take possession of all or a portion of the property, or to operate all or any part of the business of MATEP and such appointment is not vacated within 60 days, or (c) an order for relief shall have been issued or entered therein; or (3) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar

powers of MATEP or of all or a part of its property, shall have been entered; or (4) any other similar relief shall be granted against MATEP under any applicable law;

(D) MATEP fails to maintain insurance as required by subsection 11(a);

(E) (1) within 7 days of any Material Casualty, MATEP shall not have commenced diligent efforts to undertake the restoration work required under subsection 11(c), or (2) at any time during the course of such restoration work, MATEP shall fail diligently to recommence and pursue such restoration work within 7 days following notice thereof from the User to MATEP and, within 14 days of such notice, to provide reasonable evidence that such restoration work was recommenced within such 7 day period and is being pursued diligently;

(F) MATEP abandons the Plant;

(G) MATEP fails to make when due any material payment required to be made to the User under this Amended Utilities Contract (other than a payment disputed in good faith by MATEP), and such failure shall have continued for 15 days after notice thereof shall have been given by the User to MATEP; or

(H) MATEP fails to observe any other material obligation under this Amended Utilities Contract (except to the extent such failure shall have been caused by Force Majeure or by the breach by the User of any of its material obligations under this Amended Utilities Contract) after notice from the User, and such failure shall not have been cured within 30 days of such notice; provided, that if such failure is capable of cure but is not capable of cure within such 30-day period despite MATEP's diligent efforts to do so, such 30-day period shall be extended by such additional time as is reasonably necessary to cure such failure; and provided, further, that such cure is promptly commenced within such 30-day period and is diligently pursued, and that the aggregate cure period (including the initial 30-day period) shall not exceed 90 days.

(ii) Upon the occurrence and during the continuance of an Event of Default by MATEP, the User shall have the right, in its sole discretion, to do any or all of the following:

(A) terminate this Amended Utilities Contract;

(B) notwithstanding the provisions of Section 15, pursue any other remedy set forth in this Section 10 with respect to such Event of

Default, subject to the limitations and conditions set forth in this Section 10; or

(C) notwithstanding the provisions of Section 15, subject to the limitations set forth in this subsection 10(b)(ii) and subsection 11(e) , pursue any and all other remedies available hereunder or at law or in equity.

(iii) An Event of Default of the User shall occur hereunder if:

(A) the User (1) shall (a) institute a voluntary case or similar proceeding seeking liquidation or reorganization under the United States Bankruptcy Code or any applicable law, or shall consent to the institution of an involuntary case or similar proceeding thereunder against it, (b) apply for, or suffer the appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers, (c) make an assignment for the benefit of creditors, or (d) admit in writing its inability to pay its debts generally as they become due; or (2) an involuntary case shall be commenced seeking the liquidation or reorganization of the User under the United States Bankruptcy Code or any similar proceeding shall be commenced against the User under any other applicable law, and (a) the petition commencing the involuntary case is not timely controverted or is not dismissed within 60 days of its filing; (b) an interim trustee is appointed to take possession of all or a portion of the property, or to operate all or any part of the business of the User and such appointment is not vacated within 60 days, or (c) an order for relief shall have been issued or entered therein; or (3) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers of the User or of all or a part of its property, shall have been entered; or (4) any other similar relief shall be granted against the User under any applicable law;

(B) the User fails to make any material payment as and when required under this Agreement, and such failure shall have continued for fifteen (15) days after notice thereof shall have been given by MATEP to the User;

(C) subject to the cure rights in subsection 10(a)(iii)(F), the User abandons the Utilities or the Amended Utilities Contract except as contemplated by the provisions of the Amended Utilities Contract;

(D) the User fails to procure and maintain insurance as required by subsection 11(a)(ii);

(E) subject to the cure rights in subsection 10(a)(iii)(F), the User fails to procure, make, file or maintain permits, agreements, or regulatory approvals or notices that are required for the User to properly interface with the Plant and the Utilities being provided; provided, that all permits and regulatory approvals relating to interconnections covered by the MASCO Letter Agreement shall be the sole responsibility of MATEP; or

(F) the User fails to observe any other material obligation under this Amended Utilities Contract (except to the extent such failure shall have been caused by Force Majeure or by the breach by MATEP of any of its material obligations under this Amended Utilities Contract) after notice from MATEP, which failure shall not have been cured within 30 days of such notice; provided, that if such failure is capable of cure but is not capable of cure within such 30-day period despite the User's diligent efforts to do so, such 30-day period shall be extended by such additional time as is reasonably necessary to cure such failure; and, provided, further, that such cure is promptly commenced within such 30-day period and is diligently pursued to completion.

(iv) Upon the occurrence and during the continuance of an Event of Default by the User, MATEP shall have the right, in its sole discretion, to do any or all of the following:

(A) terminate this Amended Utilities Contract;

(B) notwithstanding the provisions of Section 15, pursue any legal proceeding to obtain payment of any amount due under this Amended Utilities Contract, subject to the express limitations and conditions set forth in subsection 10(a)(iii); or

(C) notwithstanding the provisions of Section 15, subject to the limitations set forth in subsection 11(e)(i), pursue any and all other remedies available hereunder or at law or in equity including specific performance.

(b) Liquidated Damages.

(i) MATEP shall pay the User liquidated damages for each Deficiency in accordance with the schedule of liquidated damages set forth on Appendix E ("Liquidated Damages"), except to the extent such Deficiency shall have been caused by Force Majeure. Such Liquidated Damages shall be determined monthly and shall be set according to the

cumulative hours of outages and excursions in excess of permissible Specifications for one or more Utility services within such month.

(ii) Except as otherwise expressly provided in this Section 10 or in Appendix G, MATEP's liability for Liquidated Damages as provided in subsection 10(b)(i) shall be the User's exclusive remedy for a Deficiency unless and until such time as such Deficiency shall have matured into an Event of Default under subsection 10(a)(i)(A) or subsection 10(a)(i)(B); provided, that nothing in this subsection 10(b)(ii) shall be deemed to limit:

(A) the User's exercise of Step-In Rights as provided in subsection 10(d) (provided, further, that no Liquidated Damages shall be payable with respect to periods of such Step-In Rights; and provided, further, that MATEP shall continue to be liable for the User's costs, expenses, and other damages, if any, as provided in the Step-In Procedures);

(B) the User's rights to cancel or suspend deliveries of any Utility or to obtain replacement deliveries of any Utility that MATEP fails to provide in accordance with the terms of this Amended Utilities Contract as provided in subsection 10(f) or subsection10(g); or

(C) any right or remedy of the User with respect to any other breach by MATEP of its obligations under this Amended Utilities Contract or with respect to any Event of Default by MATEP or any other event or circumstance other than a Deficiency.

(iii) Liquidated Damages which accrue during any month shall be due and payable on the last day of the succeeding month. Each billing statement rendered by MATEP as provided in subsection 5(d) shall set forth in detail the amount of all Liquidated Damages due for the month, a statement of how each of the Liquidated Damages was calculated, and such other supporting information and documentation as the User reasonably may request.

(iv) The parties acknowledge and agree that the User's actual damages arising from a Deficiency would be difficult or impossible to calculate, and that, in light of the circumstances, the amount of Liquidated Damages set forth in this subsection 10(b) and in Appendix E represents a reasonable approximation of such damages and not a penalty.

(v) Notwithstanding the provisions of subsection 10(b)(iii) or subsection 10(b)(iv), or of Section 14, the User shall have the right to set off, against payments due from the User to MATEP under subsection 5(d), an amount equal to any Liquidated Damages that have accrued as provided in subsection 10(b) but remain unpaid.

(c) Specific Performance. Upon a breach by MATEP of its obligations under this Amended Utilities Contract, including an Event of Default, the User shall have the right (subject to the limitations of subsection 10(b)(ii)) to obtain specific performance of MATEP's obligations to the extent of such breach. The parties hereby stipulate that the User is relying on

MATEP for Utilities services, that the supply of Utilities by MATEP to the User is unique because it is the only immediately available source of Utilities to meet most of the User's requirements, that it would be virtually impossible for the User quickly to obtain fully adequate substitutes should there be a cessation or interruption in Utilities, and that the award of damages at law may not be an adequate remedy. Accordingly, the parties hereby stipulate that a court of competent jurisdiction shall have the power and authority to grant a request for specific performance where specific performance is an appropriate remedy under applicable law or applicable equitable principles.

(d) Step-In Rights; Buy-Out Rights. Upon the occurrence of a Triggering Event or a Buy-Out Triggering Event, the Majority of Current Users shall have the right to exercise (directly or through a nominee) Step-In Rights or Buy-Out Rights pursuant to, and subject to the terms and conditions specified in, the Step-In Procedures set forth in Appendix G, as follows:

(i) upon a Deficiency Triggering Event, the Majority of Current Users may exercise, or cause their nominee to exercise, Step-In Rights as provided in the Step-In Procedures set forth in Parts 1 and 3 of Appendix G;

(ii) upon an Extended Deficiency Triggering Event, the Majority of Current Users may exercise, or cause their nominee to exercise, Buy-Out Rights as provided in the Step-In Procedures set forth in Parts 2 and 3 of Appendix G; and

(iii) upon an Immediate Triggering Event, the Majority of Current Users immediately shall have the right to exercise, or cause their nominee to exercise, the Step-In Rights or, at their option, the Buy-Out Rights, as provided in the Step-In Procedures.

(e) Remedies Cumulative. Except as expressly provided in subsection 10(b)(ii), all rights and remedies of the User and MATEP hereunder are cumulative of each other and of every other right or remedy which the User or MATEP may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

(f) Cancellation by the User. Without limiting the provisions of subsection 10(a) or subsection 10(b) or any other provision of this Amended Utilities Contract, if deliveries cannot be made to the User because either:

(i) The Plant is damaged to the extent of being completely or substantially completely destroyed, or

(ii) The Plant is taken by exercise of the right of eminent domain or a similar right or power, or

(iii) There has been a total interruption of service and the situation causing such interruption cannot be rectified to an extent which will permit MATEP to make deliveries to the User during the Term of this Amended Utilities Contract; then and in any such case, the User may cancel this Amended Utilities Contract and make such other arrangements to insure

the long-term availability of utility service as the User deems appropriate. Such cancellation shall be effected by written notice given by the User to MATEP. In the event of such cancellation, all continuing obligations of the parties shall cease forthwith.

(g) Suspension by the User. The User shall have the right to obtain delivery of alternate supplies of steam, electricity, or chilled water to the extent of any Deficiency, as may be necessary to meet the User's requirements for such Utility, whether due to breach by MATEP of its obligations under this Amended Utilities Contract, Force Majeure, or otherwise. Without limiting the generality of the foregoing, and without limiting the other provisions of this Section 10, in the event of a substantial Deficiency which is likely to last for a substantial period, the User shall be free to make such other arrangements to replace the affected Utility service as it deems appropriate (but only to the extent of the Deficiency), and the obligations of the User under this Amended Utilities Contract shall be suspended to the extent and during the continuance of such Deficiency. If, in order to replace the Utility service affected by such Deficiency, the User is required to incur Replacement Obligations which would make it technologically or financially infeasible to require the User to resume Utilities service from the Plant when such service again becomes available, the User shall advise MATEP of the nature of such Replacement Obligations and request the suspension of the provisions of this Amended Utilities Contract to the extent required by such Replacement Obligations. MATEP shall not unreasonably withhold its consent to the suspension of the User's obligations under this Amended Utilities Contract to the extent necessary to permit the User to incur Replacement Obligations and the User, recognizing that the prompt resumption of payments to MATEP is essential, agrees to use its best efforts to limit the extent of such Replacement Obligations in a manner that will minimize the adverse financial impact on MATEP.

(h) Other Circumstances. The User may cancel this Amended Utilities Contract or be relieved of its obligations hereunder in whole or in part only as provided in this Section 10.

11. Insurance.

(a) Required Insurance.

(i) MATEP. MATEP shall maintain insurance in accordance with Appendix C with respect to the Plant and to other equipment used or leased by MATEP for the provision of Utilities under this Amended Utilities Contract, such as the Dana-Farber Chiller and the HIM Chiller; provided, that so long as the owner of the Plant meets the financial standards set forth in subsection 11(b), the owner of the Plant may self-insure for all or any part of such insurance. MATEP shall provide copies of its policies to the User upon request of the User by notice to MATEP. The User shall be identified as a certificate holder on such insurance policies.

(ii) The User. The User shall maintain (A) comprehensive general liability insurance with coverage limits of not less than $5M per occurrence / $5M aggregate that can be satisfied via a combination of retained coverage for the deductible, primary and excess insurance and so called "blanket" insurance; User shall list MATEP as an additional insured on all such liability policies; and (B) Workers Compensation per the statutory limit. The User shall be entitled to self-insure the coverages required by this subsection in compliance with

applicable statutory and regulatory requirements. The User shall provide evidence of its insurance to MATEP upon request of MATEP by notice to the User. Upon request by MATEP the User will provide an update regarding changes in any material aspect to the User's insurance coverage, including coverage limits, exclusions and retention limits and will endeavor to provide MATEP, within 30 days following MATEP's request, with an updated certificate of insurance reflecting such changes.

(b) Financial Standards. The owner of the Plant may self-insure all or any part of the insurance required under subsection 11(a) if the aggregate amount of self-insurance and deductibles from time to time does not exceed one-third of the total shareholders' equity of the owner of the Plant as reflected on such owner's then-most recent balance sheet prepared in accordance with generally accepted accounting principles, consistently applied; provided, that such owner shall deliver to the User (i) prior to commencing such self-insurance, and (ii) at least annually thereafter so long as any self-insurance program remains in effect: (A) a statement certified by such owner showing the amount of such self-insurance and deductibles proposed to be carried, and (B) a balance sheet for the fiscal year then ended, certified by an independent, nationally recognized certified public accounting firm.

(c) Application of Proceeds. Without limiting the provisions of Section 10, MATEP shall apply proceeds of casualty insurance maintained by MATEP pursuant to subsection 11(a) (and any self-insured (or deductible) amounts) to repairing or restoring the Plant so that the Plant will be capable of providing the User's requirements for Utilities in accordance with the requirements of this Amended Utilities Contract, if permitted by law, unless the User agrees otherwise.

(d) Liability. The availability or unavailability of insurance coverage or insurance proceeds shall not affect MATEP's liability under this Amended Utilities Contract.

(e) Limitation of Liability.

(i) Without limiting the provisions of subsection 10(b), subsection 10(c) or subsection 10(d) or any other right or remedy expressly provided in this Amended Utilities Contract, the parties shall not be liable (whether under contract, tort (including negligence) , strict liability, or any other cause of or form of action whatsoever other than gross negligence or willful misconduct), for incidental, special, punitive, exemplary, or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

(ii) MATEP shall not be liable for any loss or damage (including Liquidated Damages) that may occur to the User to the extent caused by damage to the Plant which was caused by the negligence of the User or any other Current User, or by the breach by the User or any other Current User of its material obligations under this Amended Utilities Contract or such other Current User's corresponding Utilities Contract, respectively.

(f) Effect on Insurance.. Without limiting the right of any owner of the Plant to self-insure, the provisions of subsection 11(e) shall not be construed so as to relieve any insurer (other than an owner of the Plant meeting the financial standards set forth in subsection 11(b),

to the extent such owner shall have self-insured) of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies

12. Property on User's Premises.

MATEP and its operating agents may enter the premises of any User at reasonable times for the purposes of installing, inspecting, testing, repairing and maintaining its equipment. The User will be responsible for all damage to, or loss of, all property and equipment installed on the User's premises.

13. Assignment; Financing.

(a) Assignment. This Amended Utilities Contract shall be binding upon and shall inure to the benefit of, and may be performed by, the successors and assigns of the parties; provided, that (i) no assignment, pledge, or other transfer of this Amended Utilities Contract by the User may be made without the written consent of MATEP (which consent shall not be unreasonably withheld) and of any lender holding a security interest in MATEP's rights hereunder, except for assignments or transfers in connection with a merger or similar corporate reorganization that does not have a material adverse effect on the User's financial position or on any outstanding debt issued to finance all or any portion of the Plant; and (ii) no assignment, pledge, or other transfer of this Amended Utilities Contract by either party shall operate to release the assignor, pledgor or transferor from any of its obligations under this Amended Utilities Contract unless consent to the release is given in writing by the other party or by the assignee, pledgee or transferee of such party if such party has previously assigned, pledged or transferred this Agreement. Upon the request of MATEP, the User shall execute and deliver such assurances, agreements, documents and other instruments confirming its obligations under this Amended Utilities Contract and its consent to the assignment of such obligations by MATEP to any person acquiring MATEP's interest hereunder, as security or otherwise, as such person may reasonably request.

(b) Certification by User. By its execution and delivery of this Amended Utilities Contract, the User certifies for the benefit of MATEP that this Amended Utilities Contract is in full force and effect and no default exists thereunder as of the Amendment Effective Date.

(c) Cooperation with Financing. If requested by MATEP, the User will deliver a consent and agreement with MATEP's Lenders, pursuant to which the User:

(i) consents to the grant to the Lenders of a security interest in rights under this Amended Utilities Contract;

(ii) provides the Lenders with a copy of each notice delivered to MATEP under Section 10 of this Amended Utilities Contract and gives the Lenders the same right to cure as MATEP may have under the provisions of Section 10;

(iii) consents to the exercise by the Lenders of the rights of MATEP under this Amended Utilities Contract, or the replacement of MATEP thereunder by the Lenders, and

to the Lenders' right to assume all the rights and obligations of MATEP under this Amended Utilities Contract;

(iv) provides to the Lenders such information in connection with this Amended Utilities Contract (including resolutions, certificates or other documents relating to the User's authorization to enter into this Amended Utilities Contract and to undertake and perform the obligations set forth herein), all as reasonably may be required by the Lenders; and

(v) cooperates in good faith with the reasonable requirements of the Lenders' financing arrangements; provided, that the User shall not be required to take any action which materially would increase its obligations or diminish its rights under this Amended Utilities Contract."

The obligations of the User under this subsection 13(c) shall be performed, notwithstanding any claimed or actual Deficiency or any claimed or actual Event of Default by MATEP, subject to the User's right to set forth its claims as to such matters.

(d) Financing. Neither MATEP nor any Affiliate of MATEP shall create, assume, or suffer or permit to exist on or with respect to any Plant Assets any lien, mortgage, deed of trust, pledge, charge, easement, encumbrance or other security interest securing any debt, charge, guarantee, liability, or other obligation, or incur, create, assume, or suffer or permit to exist any debt, charge, guarantee, liability, or other obligation secured by the Plant Assets (collectively, the "Secured Obligations"), unless it first shall have been established that the total aggregate amount of Secured Obligations, which shall equal the maximum amount of debt financing commitments available to be drawn thereunder, whether funded or unfunded at incurrence ("Total Aggregate Amount of Debt Available"), is less than or equal to 75% of the unencumbered fair market value of the Plant Assets (determined pursuant to clauses (i) through (xi) below [each such determination being referred to as an "FMV Determination"]) at the time such Secured Obligations are incurred, created, assumed, or suffered or permitted to exist (the "Financing Limit"); provided, that MATEP will be excused from an FMV Determination, if at the time of the incurrence of Secured Obligations, (x) an FMV Determination has been made within the last 5 years; and (y) the aggregate amount of Secured Obligations, immediately after such new incurrence, will not exceed the lesser of (aa) on a one-time basis during such five year period following the most recent prior FMV Determination, 110% of the Total Aggregate Amount of Debt Available in place immediately prior to such new incurrence and (bb) the Financing Limit under the most recent prior FMV Determination. In order to satisfy the requirement that the Total Aggregate Amount of Debt Available under the Secured Obligations complies with the Financing Limit prior to the incurrence of any Secured Obligations that do not meet the test under clauses (x) and (y) in the proviso above, MATEP shall comply with the following procedures:

(i) MATEP shall deliver advance notice to LMEC and the Current Users of its intent to enter into such secured obligations (the "MATEP Intent to Borrow Notice") and of the Total Aggregate Amount of Debt Available under the Secured Obligations, which shall be the maximum amount of debt financing available to be drawn thereunder, whether funded or unfunded at incurrence;

(ii) MATEP shall engage a nationally recognized independent appraiser or business valuation firm to determine the fair market value of the Plant Assets, where "fair market value" shall be the price that a buyer (other than MATEP or any Current User) who is not under compulsion to buy would be willing to pay for the Plant Assets unencumbered by any liabilities in normal market environments. All costs related to such determination will be borne by MATEP or its Affiliates;

(iii) MATEP will deliver an opinion letter (the "MATEP Appraisal") from its appraiser to the LMEC and the Current Users not sooner than thirty (30) days (and not later than 270 days) after delivery of the MATEP Intent to Borrow Notice, which (aa) identifies the range of the valuation (provided, that the fair market value set forth in the MATEP Appraisal, for purposes of measuring the Financing Limit, shall not exceed the lesser of (x) the midpoint of the range of valuation and (y) one hundred ten percent (110%) of the bottom of the range of valuation [whereby the lesser of (x) and (y) shall be referred to as the "Subsection 13(d)(iii) FMV"]), (bb) summarizes the methodologies and general assumptions used to derive the MATEP Appraisal and (cc) certifies, in the expert opinion of the appraiser, that the Total Aggregate Amount of Debt Available under the Secured Obligations does not exceed the Financing Limit;

(iv) The Majority of Current Users will have up to fifteen (15) Business Days, from the date of receipt of the opinion letter, to object in writing to the opinion letter that MATEP's appraiser has delivered and to deliver their objection to the appraisal provided by MATEP's appraiser. Any objection must be made in good faith and provide the basis for the objection in reasonable detail. If the Majority of the Current Users do not object within 15 Business Days after receipt, MATEP may enter into the debt financing and create, assume or permit to exist the Total Aggregate Amount of Debt Available under the Secured Obligations up to the Financing Limit;

(v) If the Majority of the Current Users objects, MATEP and the Majority of Current Users will each appoint up to two senior representatives (the senior representatives appointed by the Majority of Current Users shall represent all of the Current Users collectively), and the representatives of the parties shall use their respective best efforts to resolve the objection as stated by the Majority of Current Users. The senior representatives will have up to 15 Business Days to seek resolution of the objection. If no successful resolution results, MATEP and the Current Users will then follow the procedures set forth in subsection 13(d)(vi). Upon a successful resolution of the objection by the senior representatives of the Majority of the Current Users and MATEP, MATEP may enter into the debt financing and create, assume or permit to exist the Total Aggregate Amount of Debt Available under the Secured Obligations up to the Financing Limit; and

(vi) If the objection of the Majority of Current Users is not resolved pursuant to subsection 13(d)(v), then within ten (10) Business Days following the expiration of the procedures set forth in subsection 13(d)(v), the Majority of Current Users will appoint an independent appraiser to represent the collective interest of the Current Users at their own cost, who will (A) receive a complete copy of (1) the MATEP Appraisal together with full detail of

the methodologies and assumptions referenced in subsection 13(d)(iii)(bb), and (2) all other information, including financial information regarding the Plant Assets, relied upon by MATEP's appraiser for the opinion delivered [(1) and (2) collectively being referred to as the "Appraisal Background Information"] and (B) review the Appraisal Background Information; provided, that (I) any financial projections (e.g., without limitation, projection of future income and capital expenditures) prepared by MATEP shall be Confidential Information (the "Confidential Financial Projection Information"), (II) MATEP shall have the right to require the appraiser appointed by the Majority of Current Users to enter into a non-disclosure agreement substantially similar to Appendix H prior to delivering any Confidential Financial Projection Information to the appraiser and (III) no Current User shall have the right to access any of the Confidential Financial Projection Information.

(vii) MATEP's appraiser and the Current Users' appraiser, both acting in an independent manner, will review (x) the Current Users' appraiser's assessment of fair market value and proposed modifications to the valuation range stated in the MATEP's Appraisal and (y) any other valuation elements which in the professional opinion of the Current Users' appraiser need to be considered to achieve a sound fair market value determination consistent with the standards of subsection 13(d)(ii). The terms of engagement of each appraisal shall specify that, within 15 Business Days after commencement (i.e., after the Current Users' appraiser has received the Appraisal Background Information, including the Confidential Financial Projection Information, and is entitled, pursuant to a confidentiality agreement, to review the same), both appraisers must endeavor in good faith either (AA) to agree that the range of values set forth in the MATEP Appraisal was correct or (BB) to report a modified range of values for the unencumbered Plant Assets.

(viii) If MATEP's appraiser and the Current Users' appraiser agree in a written submission that the MATEP Appraisal was correct, then the range of values in the MATEP Appraisal will determine the Financing Limit as set forth in subsection 13(d)(iii), and MATEP may enter into the debt financing and create, assume or permit to exist the Total Aggregate Amount of Debt Available under the Secured Obligations to the extent of the Financing Limit as so agreed.

(ix) If MATEP's appraiser and the Current Users' appraiser agree on a modified range of values for the unencumbered Plant Assets, the range of values so reported will determine the Financing Limit as set forth in subsection 13(d)(iii), and MATEP may enter into the debt financing and create, assume or permit to exist Total Aggregate Amount of Debt Available under the Secured Obligations to the extent of the Financing Limit as so reported.

(x) If MATEP's appraiser and the Current Users' appraiser cannot timely agree upon either (AA) or (BB) of subsection 13(d)(vii), then the Current Users' appraiser will report its assessment of fair market value (the "Users' Appraisal"), and the two appraisers shall, within five (5) additional Business Days, agree upon a third independent appraiser (or if they cannot timely agree, either MATEP or the Majority of the Current Users may apply to the American Arbitration Association in Boston, Massachusetts to appoint a third independent appraiser) who shall (i) sign the equivalent confidentiality agreement previously signed by the Current Users' appraiser; (ii) receive the Appraisal Background Information, including the

Confidential Financial Projection Information and the Users' Appraisal; and (iii) appraise the fair market value of the Plant Assets as aforesaid. The fair market value of the Plant Assets shall be deemed the average of the two numerically closest values (of the three appraisers) or if the values are equidistant, the middle value. (Where any appraiser reports a range of fair market values, the fair market value for purposes of comparisons under this subsection 13(d)(x), shall be the Subsection 13(d)(iii) FMV applicable to such fair market value range, calculated in the manner specified in subsection 13(d)(iii)). After the determination of fair market value under this clause (x), MATEP may enter into the debt financing and create, assume or permit to exist Total Aggregate Amount of Debt Available under Secured Obligations to the extent of the Financing Limit based on fair market value of the Plant Assets as determined pursuant to this subsection 13(d)(x).

(xi) The cost and expense of the third appraiser will be paid as follows: if the third appraiser's fair market value is equidistant between the MATEP Appraisal and the User Appraisal, then the cost of the third appraiser will be split equally by MATEP and the Current Users; if the third appraiser's value is closer to either of the other appraisers' values, then the cost of the third appraiser will be borne solely by the party whose appraiser's value was more distant from the third appraiser's value.

14. Right of Setoff.

The User shall not be entitled to set off against the payments required to be made by it under this Amended Utilities Contract (a) any amounts owed to it by MATEP or any designated operating agent employed by MATEP or (b) the amount of any claim by it against MATEP or any designated operating agent employed by MATEP. However, the foregoing shall not affect in any other way the User's rights and remedies with respect to any such amounts owed to it or any such claim by it against MATEP or any designated operating agent employed by MATEP.

15. Dispute Resolution.

(a) Escalation Procedures. Except as otherwise provided in Section 7 and Section 10, if any Dispute shall arise, then the matter shall be resolved by using the following "Escalation Procedures":

(i) Either MATEP or the User may escalate the matter by giving written notice to the other specifying the nature of the Dispute and the proposed language of the resolution (the "Proposed Resolution") of the Dispute.

(ii) Within 10 days of the notice of "escalation" given pursuant to clause (i) above, a designated representative of the User shall meet with a designated representative of MATEP who shall discuss the Dispute and attempt in good faith to achieve resolution. If the parties cannot resolve the Dispute within 20 days of the notice of escalation given under clause (i) above (the "First Tier Resolution Deadline"), the matter shall be resolved in accordance with the following process:

STEP 1. Either the Chief Executive Officer, Chief Operating Officer, Chief

Financial Officer or General Counsel or Senior Vice President for Facilities of the User [titles to adjust from time to time to match the User's corporate governance structure] shall meet with the Chief Executive Officer of MATEP who shall discuss the Dispute and attempt in good faith to achieve resolution. If the Dispute is not resolved within 20 days after the First Tier Resolution Deadline (such 20th day, the "Second Tier Resolution Deadline"), the parties shall proceed to Step 2.

STEP 2. Either the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or General Counsel of the User [titles to adjust from time to time to match the User's corporate governance structure] shall meet with the (x) responsible officer of Morgan Stanley Infrastructure (MSIP) or (y) if MSIP is no longer the majority owner of MATEP, the responsible officer of the then majority owner; responsible officer means an officer invested with authority to achieve final resolution of the Dispute. The representatives of the parties shall discuss the Dispute with each other and attempt in good faith to achieve resolution within 30 days of the Second Tier Resolution Deadline.

STEP 3. Solely in the event of a "Major Dispute," defined to be any Dispute the value of which, in the opinion of either party, may reasonably exceed $10 million, which Dispute cannot be resolved through Steps 1 and 2 above, the parties agree to use good faith efforts to resolve the Dispute through a non-binding mediation process in accordance with rules and procedures set forth for such commercial disputes by JAMS, Inc. (formerly known as Judicial Arbitration and Mediation Services, Inc. ("JAMS"), to be conducted in Boston, Massachusetts over no more than three (3) consecutive Business Days by a mutually agreed mediator; provided, that if the User and MATEP cannot agree on a mediator within five (5) Business Days after the referral to JAMS, then the party who initiated the Dispute escalation shall select five (5) proposed JAMS mediators and forward the names to the other party to select one; and, provided further, that the costs of JAMS shall be borne equally by the Parties.

(iii) Under each Utilities Contract, where a Dispute is essentially identical for more than one User, the selected Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or General Counsel [titles to adjust from time to time to match the User's corporate governance structure] may, at the discretion of the other Current Users, represent such other Current Users involved in the Dispute.

(b) Performance to Continue. Each party shall continue to perform its obligations under this Amended Utilities Contract during the pendency of a Dispute or the referral of such Dispute to the Escalation Procedures, subject to subsection 15(c).

(c) Opt-out. The Escalation Procedures shall not apply to any Dispute if, at any time during the pendency of such Dispute or the attempted resolution of such Dispute pursuant to the Escalation Procedures, either party informs the other, by written notice referring specifically to this subsection, of its intent to opt-out of the Escalation Procedures. The notice must assert that:

(i) there is a material breach by the other party of its obligations under the Amended Utilities Contract; and

(ii) the party giving the notice elects not to use the Escalation Procedures with respect to such Dispute.

Upon delivery of such notice, either party may seek from a court of competent jurisdiction any relief to which such party may be entitled under this Amended Utilities Contract or applicable law; provided, that, if a Dispute is proceeding with non-binding mediation under STEP 3 above, neither party may exercise its right to Opt-out until the earlier of (aa) completion of the JAMS non-binding mediation and (bb) ninety (90) days after the first notice to JAMS initiating such mediation.

(d) Exercise of Remedies. The pendency of a Dispute, or a party's referral of a Dispute to the Escalation Procedures, shall not prevent the User from exercising any right or remedy set forth in Section 10 when entitled to do so under Section 10, and, for avoidance of doubt, it shall not be necessary for the Majority of Current Users to refer any matter to the Escalation Procedures, or to exercise their rights under subsection 15(c) to opt-out of the Escalation Procedures, prior to exercising Step-In Rights or Buy-Out Rights when entitled to do so pursuant to the terms of subsection 10(d) and of Appendix G.

(e) Costs and Expenses. Each Party agrees to bear its respective costs and expenses related to the resolution of any Dispute under this Amended Utilities Contract including attorney's fees and consultants fees, regardless of any otherwise applicable statutes, customs or practices, under law or equity, that may require the non-prevailing party to pay for the costs incurred by the so-called "prevailing party" in such Disputes.

16. Business Days.

Whenever any payment shall be due hereunder on a day which is not a Business Day, such payment shall be made on the next preceding Business Day. In all other cases in which a day or date may be relevant hereunder, if such day or date is not a Business Day, the action required or permitted to be taken or (to the extent provided in Section 18) the notice deemed to have been received shall be required, permitted, or deemed received as of the next succeeding Business Day.

17. Applicable Law.

This Amended Utilities Contract shall take effect as an instrument under seal and shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts, without giving effect to the principles thereof relating to conflicts of law.

18. Notices.

All notices, requests, demands and other communications which are required or may be

given under this Amended Utilities Contract shall be in writing and shall be deemed to have been duly given: (a) upon receipt, if personally delivered or if given by a sheriff or constable pursuant to Massachusetts or Federal Rules of Civil Procedure; (b) when transmitted, if transmitted by facsimile, electronic, or digital transmission method (or, if received after 5:00 p.m. Boston, Massachusetts time on a Business Day or on a day other than a Business Day, then on the next Business Day), subject to the recipient confirming by telephone that the recipient has received the notice; or (c) upon receipt, if sent for next Business Day delivery by recognized overnight delivery service (e.g., Federal Express) or by certified or registered mail, return receipt requested. In each case, notice shall be sent to the address set forth below or to such other place and with such other copies as either party may designate as to itself by notice to the others, pursuant to this Section 18.

If to MATEP:

MATEP, LLC
474 Brookline Avenue
Boston, MA 02215
Attn: President & CEO
Telephone: (617) 598-2360
Facsimile: (617) 598-2750

With a copy to:
Morgan Stanley Infrastructure
1585 Broadway, 39th Floor
New York, NY 10036
Attn: Thomas Gray
Telephone: (212) 761-0162
Facsimile: (212) 507-0395

If to the User:

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.
75 Francis Street
Boston, MA 02115
Attn.: President
Telephone: (617) 732-5343
Facsimile: (617) 732-5537

With a copy to:

Partners HealthCare System, Inc.
Office of General Counsel
50 Staniford Street, Suite 1000
Boston, MA 02114
Attn: BWH Managing Counsel
Telephone: (617)-726-8625
Fax: (617)-726-1665

19. Corporate Obligations; Inurement.

This Amended Utilities Contract is the corporate act and obligation of the parties, and any claim hereunder against any trustee, member, director, or officer of either party, as such, is expressly waived. This Amended Utilities Contract shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Amended Utilities Contract, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Amended Utilities Contract; provided, that each Current User shall be a third-party beneficiary of the obligations of each of MATEP and the User under Appendix G and the provisions of subsection 10(d) of this Amended Utilities Contract and, without limiting the provisions of subsection 20(b), no term or provision of Appendix G or subsection 10(d) may be changed or terminated in any manner that reasonably could be expected to have a material adverse effect on the rights or obligations of the other Current Users without the prior written consent of the Majority of Current Users.

20. Effectiveness and Prior Agreements; Written Changes.

(a) Effectiveness and Prior Agreements. The terms and conditions of this Amended Utilities Contract shall be effective as of the Amendment Effective Date and, from such date, shall supersede all prior agreements (including the RUC and the First Amendment) and shall constitute a complete integration of the agreement between the parties with respect to the subject matter of this Amended Utilities Contract; provided, that this Amended Utilities Contract shall not in any way affect the rights of the parties accrued with respect to the period prior to the Amendment Effective Date.

(b) Written Changes. No term or provision of this Amended Utilities Contract may be changed, waived, discharged, or terminated by any means other than an instrument in writing duly executed by the party against whom the enforcement of the change, waiver, discharge, or termination shall be sought.

21. Term.

(a) Initial Term. The initial term of this Amended Utilities Contract (the "Initial Term") shall expire on September 30, 2051.

(b) Extension of Initial Term. Eight years prior to the end of (i) the Initial Term or (ii) any extended term as provided herein, MATEP and the User shall meet to negotiate an

extension of this Amended Utilities Contract, including the price, terms and conditions under which MATEP will sell and the User will buy future services from the Plant consistent with the provisions of Section 1(b). The User parity requirements of Section 5(g) shall be included in any such extension contract. No party shall be obligated to sign any extension contract, and the failure of MATEP and the User to agree on an extension contract within 12 months will permit MATEP or the User to make other plans (for periods following the expiration of this Amended Utilities Contract).

(c) Right of First Offer. After the expiration of the Initial Term or any extended term of this Amended Utilities Contract, MATEP shall not sell to any third party (other than another Current User), and the User shall not purchase from any third party, steam, electricity, or chilled water within the Committed Capability (in the case of MATEP) or within the requirements of the User required to be served by MATEP under this Amended Utilities Contract on the date of such expiration (in the case of the User), unless MATEP or the User, as the case may be, first shall have offered to the other party the right to purchase or sell such steam, electricity, or chilled water, as the case may be, on the same terms and conditions (including price) on which such party proposes to sell to or purchase from such third party (excluding, however, price components ("Distribution Cost Components") associated solely with MATEP's or the User's costs of constructing additional distribution to connect to such third party, such Distribution Cost Components to be determined following the procedures outlined in Section 15); provided, that such third party shall be a bona-fide third party purchaser or seller, as the case may be; and provided, further, that if the other party declines such offer, then MATEP or the User, as the case may be, may make such sale or purchase on terms no less favorable than those offered to the other party hereto.

22. Counterparts; Delivery.

This Amended Utilities Contract may be executed and delivered in two or more counterparts, each of which, when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument. This Amended Utilities Contract may be delivered by facsimile transmission.

23. Interpretation.

In this Amended Utilities Contract, except as expressly set forth herein or therein:

(a) Definitions. The terms set forth on Appendix A shall have the meaning assigned to such terms in Appendix A.

(b) Headings. The section, subsection and other headings contained in this Amended Utilities Contract, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amended Utilities Contract;

(c) Words of Limitation. Whenever the words "include", "includes" , or "including" are used in this Amended Utilities Contract, they shall be deemed to be followed by the words "without limitation";

(d) Gender; Number. Unless otherwise indicated herein or the context otherwise requires, the masculine pronoun shall include the feminine and neuter, and the singular shall include the plural;

(e) "Or" not Exclusive. The word "or" shall not be deemed exclusive;

(f) No Presumption. This Amended Utilities Contract is the result of negotiations between, and has been reviewed by, each of the parties and their respective counsel. Accordingly, this Amended Utilities Contract shall be deemed to be the product of both parties, and there shall be no presumption that an ambiguity shall be construed in favor of or against either party;

(g) Consultation. The words "consult", "consultation", and the like shall mean the provision of information and the solicitation of views through such means as meetings, technical inspections, or exchange of written information as either party reasonably may request, but (without limiting any other provision of this Amended Utilities Contract) shall not require a party to obtain the consent of the other party with respect to the matter subject to such consultation.

(h) References to Schedules, Appendices and Sections. References to a "Schedule" or an "Appendix" shall mean a Schedule or an Appendix to this Amended Utilities Contract, which are attached hereto and which are incorporated herein by reference. Unless otherwise specified, all references to Sections and subsections shall be to Sections and subsections of this Amended Utilities Contract and of the Schedules and Appendices, as the case shall be.

(i) References to Party. References to a party or other person or entity shall include its successors and assigns.

24. Confidentiality.

(a) MATEP, together with its Affiliates and Representatives, will hold in confidence any Confidential Information of the User, and the User, together with its Affiliates and Representatives, will hold in confidence any Confidential Information of MATEP. Neither the User nor MATEP will, except as provided below in this Section 24, without the prior written consent of the disclosing party, disclose any Confidential Information of the other party (whether such Confidential Information was received directly or indirectly from the party who first disclosed the Confidential Information) in any manner whatsoever, in whole or in part. The party that has received the Confidential Information may disclose Confidential Information only: (i) to its respective Affiliates and Representatives who reasonably need to know the Confidential Information for purposes of, in the case of the User, evaluating MATEP's management and operation of the Plant and MATEP's compliance with the terms and conditions of this Agreement and, in the case of MATEP, evaluating the User's operations, practices and procedures and the User's compliance with the terms and conditions of this Agreement; (ii) at the request of any governmental authority or regulatory agency or accreditation organization having jurisdiction over the receiving party or any of its Affiliates or

Representatives to the extent such disclosure is required by law or for accreditation; (iii) pursuant to subpoena, court order or other legal process or as otherwise required by applicable law; (iv) in connection with any action or proceeding related to, or with the exercise of any rights or remedies under, the Amended Utilities Contract; (v) if the receiving party is the User, in compliance with those provisions of subsections 6(e) and 6(g) that limit the disclosure of Confidential Information to non-Users that have, or to the Audit Engineer or Representative that has, executed the Confidentiality (Non-Disclosure) Agreement referred to therein; (vi) if the receiving party is MATEP, in connection with the financing, sale or lease of the Plant as long as all persons receiving such Confidential Information shall have executed written confidentiality agreements; (vii) if the receiving party is the User, to any of the other Current Users; and (viii) if the receiving party is the User, to the directors, officers, managers, employees, accountants and attorneys of such User.

(b) Notwithstanding subsection 24(a) and the definition of Confidential Information in Appendix A, the following will not constitute Confidential Information under this Amended Utilities Contract:

(i) information which the receiving party already had in its possession or the possession of any of its Affiliates or Representatives prior to its receipt of the newly disclosed information, as long as the receiving party had a good faith reasonable basis for believing such originally received information was other than Confidential Information when the receiving party received such information;

(ii) information which the receiving party or its respective Affiliates or Representatives, obtained from a third person (other than any other Current User) who, to the best of actual knowledge of the receiving party without special inquiry, is or was not prohibited from transmitting the information to the receiving party by a contractual, legal or fiduciary obligation; and

(iii) information which is or becomes publicly available through no fault of the receiving party or any other Current User in violation of subsection 24(a) of this Amended Utilities Contract or any other Current User's respective Amended Utilities Contract.

(c) Whenever a receiving party may be requested or required (by oral depositions, interrogatories, requests for written information or documents, subpoena, civil investigative demand or other legal process) to disclose any Confidential Information, the receiving party will provide to the disclosing party, to the extent permissible under applicable law or regulation, with immediate notice of such request or requirement so that the disclosing party may seek an appropriate protective order or waive compliance with the provisions of subsection 24(a). If a protective order or the receipt of a waiver is not obtained, and the receiving party is, in the written opinion of its counsel, compelled to disclose Confidential Information, the receiving party may disclose that portion of the Confidential Information which its counsel advises in writing that it is compelled to disclose. The receiving party will cooperate with the disclosing party in any reasonable action brought by the disclosing party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information in accordance with the terms of subsection 24(a).

(d) LMEC shall be treated as a "Current User" for purposes of this Section 24 when LMEC has executed a Limited Joinder in the form attached to this Amended Utilities Contract (or an equivalent separate agreement with MATEP applicable to all Current Users).

25. Severability.

If any one or more of the provisions of this Amended Utilities Contract or of any Appendix is determined by a governmental authority of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such determination shall not affect the validity, legality, or enforceability of the remaining provisions.

26. Further Assurances.

The parties agree to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Amended Utilities Contract, and each will take all reasonable actions within its authority to secure the cooperation of its affiliates, agents, and representatives.

IN WITNESS WHEREOF, the parties have executed this Amended Utilities Contract as a sealed Massachusetts instrument by their respective officers thereunto duly authorized as of the date and year first set forth above.

MATEP LLC

By: _____
Name: Richard Kessel
By: President and Chief Executive Officer

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.

By: _____ 3/3/16
Name: John Pierro
Title: Senior Vice President, Facilities and Operations

SCHEDULE 1

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.

1. Facilities Serviced by MATEP

Brigham and Women's Hospital	75 Francis Street
Longwood Medical Research Institute	221 Longwood Avenue
ServiCenter Garage	80 Francis Street

2. Exceptions

None.

SCHEDULE 2

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.

Delivery Points

1. Brigham and Women's Hospital Building

   Electricity. The delivery point for Electricity is the point at which the wiring for electric service extends two feet over the property line onto the property owned by The Brigham and Women's Hospital, Inc.

   Steam and Chilled Water. The delivery point for Steam and Chilled Water is the point in the delivery system tunnel wall under Shattuck Street at which the piping enters the basement of the Brigham and Women's Hospital Building.

2. Longwood Medical Research Building

   Electricity. The delivery point for Electricity is the point at which the wiring for electric service extends two feet over the property line onto the property owned by The Brigham and Women's Hospital, Inc.

   Steam and Chilled Water. The delivery point for Steam and Chilled Water is the point at which the piping crosses the property line of the property owned by The Brigham and Women's Hospital, Inc. on Longwood Avenue.

3. ServiCenter Garage

   Steam and Chilled Water. The delivery point for Steam and Chilled Water is the point at which the piping crosses the property line of the property owned by The Brigham and Women's Hospital, Inc. on Francis Street.

SCHEDULE 3

OPERATING AND MAINTENANCE RECORDS

I. Design Information

A. Enable access to currently available (i.e., in MATEP's possession or control) system drawings, layouts, equipment schematics and diagrams for critical systems, components and equipment. Critical systems, components and equipment are those whose failure could result in an interruption of Utility services to the User. Includes information related but not limited to:

1. Drawings for Diesel Generators layouts, subsystems and ancillary equipment systems

2. Piping system layouts for steam, chilled water and power to customers and inter-ties to local utilities (water, sewer, power, natural gas)

3. Major structures and tunnels that provide interconnections between the customer's facilities

4. Electrical system one-line diagrams from the generators to the load centers (including feeders to User busses) for critical systems, components and equipment.

5. Fuel supply system tanks, piping and delivery systems

6. Water storage and discharge tanks and piping system layout drawings

7. Instrumentation and controls system schematics for critical systems, components and equipment

8. Vendor manuals or vendor operating and maintenance instructions for critical systems, components and equipment.

B. Provide a summary of major design upgrades or modifications for critical equipment, systems or components since the last audit that were intended to improve reliability and at a cost of more than $100,000 per change.

II. Operating Data

A. Enable access to the current Operating Procedures or Instructions (including equipment identification and system marking) for:

1. Diesel Generators

2. Steam Turbine Generators

3. Combustion Turbine Generators

4. Heat Recovery Steam Generators (HRSG)

5. Steam Boilers

6. Chillers (motor driven or turbine-driven)

7. Electrical plant from generators to load centers and intersystem tie lines to local utility, including without limitation load shedding protocols and related breaker coordination under Section 5(a)(iv)(C)

8. Environmentally sensitive water, fuel, refrigerant, gaseous exhaust systems, including monitoring instrumentation and controls

9. Chemistry and chemistry control

B. Provide a sample copy of the operator routine operating rounds log-sheets and monitoring records for operator watch stations.

C. Enable access to the shift operations log sheets or narrative log for any upset condition or event that resulted in a loss of service to customers for greater than 15 minutes since the last audit, including verification of post-event corrective actions via MATEP supplied report and interviews with appropriate personnel involved.

D. Enable access to data from tests normally performed to assess continued reliability of critical equipment.

E. Provide a copy of data regarding greenhouse gas emissions (GGE), water discharged and quantities of CFCs used on an annual basis, with sufficient data to enable User to assess GGE associated with the User's use of MATEP Utilities and comply with the User's GGE reporting obligations.

F. Enable access to buss and breaker coordination and reliability analyses reflecting current condition of the 13.8kV and 4kV electrical distribution systems.

G. Enable access to a listing of training programs performed since the last audit.

H. Provide a summary report of OSHA related reporting statistics.

I. Provide the current year proposed capital budget, the previous years' capital budget since the last audit, and the proposed capital budgets for the next two (2) years.

J. Provide a copy of any investigation or assessment of any upset condition that resulted in a loss of customer service for greater than 15 minutes since the last audit, including Root Cause Analysis reports or Problem Reports; provided if any upset condition resulted in injury or damage to persons or property that could reasonably give rise to litigation by or on behalf of the person or entity suffering such damage or injury, MATEP's counsel shall be entitled to assert attorney-client privilege with respect to one or more portions of the investigation or assessment report so long as such assertion of privilege is in writing and is accompanied by a "privilege log" in the form customarily utilized in discovery proceedings. MATEP will cooperate with the User regarding any additional information required by the User for its regulatory and accreditation record-keeping obligations and filings.

K. Provide a copy of any EPA or OSHA violations, or Discrepancy notices issued since the last audit that could affect Plant reliability and MATEP response to the event or condition noted in the reports.

L. Provide copies of standard water chemistry surveys or assessment that have been performed since the last audit.

III. Maintenance Data

A. Provide Maximo data electronically as supplied in past audits to the User's audit engineer. Included in this data, without limitation, will be the entire data base with respect to Corrective, Preventive and Predictive Maintenance Actions. Data will also include FAC program status. For the avoidance of doubt the parties confirm the User's audit engineer shall be entitled to have electronic access to this Maximo data for approximately one (1) month in advance of an on-site activity to carry out an efficient and effective audit. Users will provide notice to MATEP two months prior to the on-site audit to allow for data to be submitted to User's audit engineer within thirty (30) days after the User notice so that the audit engineer can analyze the data during this one month period prior to the on-site audit; after the on-site audit the audit engineer shall have continued access to Maximo data for an additional month to facilitate checking and preparation of the audit report.

B. Enable access to the current Maintenance Procedures or Instructions for:

1. Diesel Generators
2. Steam Turbine Generators
3. Combustion Turbine Generators
4. Heat Recovery Steam Generators (HRSG)
5. Steam Boilers
6. Chillers (motor driven and turbine driven)

7. Electrical plant from generators to load centers and intersystem tie lines to local utility

8. Environmentally sensitive water, fuel, refrigerant, gaseous exhaust systems including monitoring instrumentation and controls.

C. Provide a listing of the equipment failures for critical systems, components and equipment since the last audit. This information should include any unexpected failure that disabled the system, component or equipment and required corrective maintenance.

D. Enable access to a listing of the nondestructive examination (NDE) program results for critical systems, components and equipment since the last audit. This information should include any unexpected indication that required repair, the methods of repair and modifications to the NDE program that were made in response to the failure.

E. Provide the outage schedules for critical systems, components and equipment since the last audit. This information should include the outage work planned, work deferred and work completed. This should also include the planned outages for the next 1 year.

IV. Personnel and Planning

A. Enable access to the current organization chart showing the key positions.

B. Provide a shift worker rotation schedule; provided individual worker names may be deleted as long as positions and titles are set forth.

C. Enable access to the Safety Manual and the Quality Assurance / Control Manual and indicators for accidents, near misses, or safety program challenges.

D. Provide a summary report of overtime hours as a percentage of overall hours worked, personnel turnover rate for key workers and indicators for the training programs for plant workers.

E. Provide the corporate strategic goals with respect to Plant systems for current year and next 3 years.

Notes

1. "Provide" means that materials will be provided to the User's representative for purposes of the audit but are to be held confidential and returned within 2 months; it is expected all materials will be provided essentially contemporaneously within 30 days of the User audit notice. "Enable access" means that the Party to whom access is provided may

review such information to the extent noted below on a secure, virtual internet-based data management platform (the "Virtual Data Room"), subject to the following: For the purpose of any technical audit, operating and maintenance inspections or other technical information flow, the User, subject to its confidentiality obligations in Section 24, and the User's representative (e.g., without limitation, an audit engineering firm), subject to the execution of a confidentiality and non-disclosure agreement substantially in the form of Appendix H, shall be entitled to view such electronically available material during the period of the audit as described below in the Virtual Data Room (i.e., one month prior to the on-site audit, during the on-site audit , and one month subsequent to the on-site audit to facilitate audit report preparation) and User's representative may, upon request, obtain copies of Confidential documents for which a specific copy of such information would facilitate the efficient exercise of inspection and audit responsibilities in a customary fashion. In connection with the turnover of any copies of documents, MATEP may require that each page of the copy be stamped "Confidential" and "Document is to be returned to MATEP" or other similar legends. At the conclusion of any such technical audits, operation and maintenance reviews or event reviews, all copies of documents so obtained shall be returned to MATEP unless MATEP expressly allows retention. Copies of documents and data delivered pursuant to this Schedule 3 shall be subject to the respective obligations of confidentiality and conditions on use set forth in Sections 6 and 24 and Appendix H.

2. References to any information in this Schedule 3 exclude (a) salary and benefit data and (b) net margins or other financial data.

3. References to "indicators", "information", "assessments", "reports", "surveys", "data" and the like that are to be provided by MATEP under this Schedule 3 are to be interpreted by the User or its audit engineer in light of the pertinent industry guidelines (e.g., without limitation, EPRI, NFPA, IEEE and ASTM) in effect from time to time as the same shall apply to the Plant and be employed by district energy facilities similar to the size, technology, design, operating and end-user characteristics of the Plant.

4. The time frame for information, data and the like is generally from last audit except where a meaningful assessment requires a different perspective, e.g., without limitation, design or program modifications or post-event corrective actions having longer implementation periods, but in no event sooner than the amount of time that would be allowed to an independent utility business.

5. Without derogating from the foregoing provisions of Schedule 3, with respect to the specific items listed below, MATEP shall enable access to

the User's representative by placing such items into the Virtual Data Room and to provide the User's representative with user name and password access to such room on a 24/7 basis:

Section	Description
I.A.	General plant layout and high level process flow drawings
I.A.4.	Electrical One-line diagram
I.A.7.	P&ID's for critical systems
I.A.8.	Vendor O&M manuals that are available electronically
II.A.	Operations Procedures
II.D.	Any test/maintenance reports prepared in the normal course (since the last audit; provided, that the first engineering review after the Amendment Effective Date shall relate back to the engineering review issued in 2011 and shall not be required to be started prior to June 1, 2016) for critical systems, components and equipment
II.F.	Electrical Coordination Analyses
II.G.	Training Programs Listing
II.J.	Root Cause Report since the last audit (if applicable)
III.B.	Maintenance Procedures
IV.C.	Safety Manual

Schedule 4

Information Requirements for MATEP Billing Statements

Invoice Characteristic	Invoice By Type of Service*		
	Electricity	Chilled Water	Steam
Statement Date	✓	✓	✓
Customer Name and Address	✓	✓	✓
MATEP's assigned Customer Number	✓	✓	✓
Energy commodity identification	✓	✓	✓
Service Location(s) (Metering Point Location)	✓	✓	✓
Meter Number or Numbers	✓	✓	✓
"From Reading" Date and Time	0	0	0
"To Reading" Date and Time	0	0	0
Total Period Consumption	✓	✓	✓
Tabulated display of previous year use and demands	0	0	0
Detailed calculations of billing determinants and unit rates	0	0	0
Outstanding Balance to date (Not always available depending on billing date)	0	0	0
New Charges	✓	✓	✓
Total Due	✓	✓	✓
Billing Period Peak Demand Value and Units	✓	✓	N/A
Billing Period Peak Demand Date and Time	0	0	N/A
Billing Demand Value and Units	N/A	N/A	✓
Billing Demand Date and Time	N/A	N/A	N/A
Peak Hours Total Use and Units	✓	✓	N/A
Off-Peak Hours Total Use and Units	✓	✓	
Deduction Data (meter readings and other deduction-related data for accounts where deduct billing is applicable)	0	0	0
All submeter data for each submeter on User account(s)	0	0	0
100% of MAC	NA	0	NA
80% of MAC	NA	0	NA

0 - Represents Items currently not shown on Invoices
✓-Represents Items currently shown (per subsection 5(e))

DEFINITIONS

"Actual Price" shall have the meaning set forth in subsection 2(b)(A)(1).

"Affiliate" means, as to MATEP or the User, any person that controls, is controlled by or is under common control with MATEP or the User, as the case may be. As used herein, "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

"Amended Other Utilities Contract" shall mean the Amended Other Utilities Contract, dated as of September 30, 2015, between MATEP and The Children's Hospital Corporation, relating to the delivery of utilities to the buildings referred to therein as the Clinical Building, the Karp Building and 57 Binney Street.

"Amendment Effective Date" shall mean October 1, 2015.

"Assumed Liabilities" shall mean all amounts currently due or outstanding under contracts of MATEP relating to the Plant and relating to the period after the closing of the exercise of Buy-Out Rights that the Majority of Current Users or their nominee elect at their option to assume in writing upon such closing, as described in subsection 2.4 of Appendix G.

"Audit Engineer" shall mean an engineer or engineering firm acceptable to the Current Users.

"Back-Up Distribution System" shall mean transmission or distribution feeds from the distribution system of Eversource to the Plant or the User in addition to Eversource Tie Lines, or an expansion or upgrade of the Tie Line Capacity of such Eversource Tie Lines, to be constructed and operated as provided in subsection 6(b).

"Business Day" shall mean any day other than a Saturday or a Sunday or a day on which banks in Boston, Massachusetts are required or authorized by law to be closed.

"Buy-Out Notice" shall mean a notice delivered by the Majority of Current Users to MATEP setting forth that the Majority of Current Users intend to exercise Buy-Out Rights as provided in subsection 2.1 of Appendix G.

"Buy-Out Price" shall mean the fair market value of the Plant Assets, as determined by the appraisal procedure set forth in subsection 2.3 of Appendix G, less the sum of (i) the Permitted Debt, (ii) all amounts currently owed by MATEP to the Current Users and (iii) the Assumed Liabilities.

"Buy-Out Rights" shall mean the right of the Majority of Current Users or their nominee to

acquire ownership of the Plant and other Plant Assets, as set out more fully in subsection 10(d) and Parts 2 and 3 of Appendix G.

"Buy-Out Triggering Event" shall mean an Extended Deficiency Triggering Event or an Immediate Triggering Event.

"Capacity Charge" shall have the meaning set forth in subsection 5(c)(ii).

"Chilled Water Charge" shall have the meaning set forth in subsection 5(c)(i).

"Commercially Reasonable" shall mean reasonable, diligent and good faith efforts to accomplish the given objective without any requirement to (x) incur any costs or liabilities or (y) suffer any other detriment that would be in excess of what would be undertaken by similarly situated production and distribution facilities serving end-user facilities and operations similar to those medical, research and clinical facilities of the Current Users, unless otherwise expressly stated to the contrary (the costs and liabilities referred to in clause (x) and the detriment referred to in clause (y) are collectively referred to herein as "Cost Limitations").

"Committed Capability" shall have the meaning set forth in Appendix D.

"Confidential Information" means all data, reports, studies, analyses, policies, procedures, drawings, manuals, interpretations, forecasts and records containing or otherwise reflecting information and concerning the Plant or the operations or management of the Plant which are not available to the general public and which are marked with the words "CONFIDENTIAL" or "PROPRIETARY" or other words to similar effect.

"CPI" shall mean the United States Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, Northeast Region, All Items (1982-1984 = 100) or, if that index is suspended or discontinued, a substitute index determined under the dispute resolution procedures set forth in Section 15 of this Amended Utilities Contract.

"Cure Plan" shall mean a plan for the prevention or cure by MATEP or the Lenders of a Deficiency Triggering Event, an Extended Deficiency Triggering Event, or a Deficiency, and of the causes thereof, as provided in subsection 1.2 or subsection 2.2 of Appendix G to this Agreement, which plan (i) shall contain reasonable estimates of the cost and time involved in achieving such cure, and (ii) shall be a technically prudent and economically feasible means for effecting such prevention or cure within a time that is reasonably expeditious under the circumstances.

"Current Users" shall mean each of the following entities that, on October 31, 1997, owned facilities located in the geographic area known as the Longwood Medical Area:

1. Beth Israel Deaconess Medical Center, Inc. (successor by merger to The Beth Israel Hospital Association);

2. The Brigham and Women's Hospital, Inc.;

3. Beth Israel Deaconess Medical Center, Inc. (successor by merger to New England Deaconess Hospital);

4. Dana-Farber Cancer Institute, Inc. (formerly known as Sidney Farber Cancer Institute, Inc.);

5. Joslin Diabetes Center, Inc. (formerly known as Joslin Diabetes Foundation, Inc.);

6. The Children's Hospital Corporation (assignee of The Children's Hospital Medical Center); and

7. President and Fellows of Harvard College and its successors and assigns.

"Customer" shall mean the persons obtaining steam, electricity, or chilled water directly from the Plant from time to time.

"Dana-Farber Chiller" shall mean the equipment and systems used in the production of chilled water located at and owned by Dana-Farber Cancer Institute, Inc., and leased to MATEP by lease dated as of January 1, 1995, as amended as of September 30, 2015.

"Deficiency" shall mean any failure by MATEP to provide continuous delivery to the User of the User's requirements for each Utility meeting the Specifications (7 days a week, 24 hours a day), including any such failure caused by Force Majeure, but excluding any failure to the extent caused by the negligence of the User or any other Current User or by the breach by the User or any other Current User of any of its material obligations under this Amended Utilities Contract or such other Current User's corresponding Utilities Contract, respectively.

"Deficiency Notice" shall mean a notice delivered by the Majority of Current Users to MATEP setting forth that the Majority of Current Users intend to exercise Step-In Rights as provided in subsection 1.1 of Appendix G.

"Deficiency Triggering Event" shall mean a Deficiency in Utility service affecting two or more Current Users for a continuous period of 240 hours, or for an aggregate of 240 hours in any 30-day period; provided, however, that no Deficiency Triggering Event shall be a Deficiency Triggering Event if caused by Force Majeure unless the Deficiency caused by such Force Majeure cannot be cured by MATEP but can be cured by the Majority of Current Users or their nominee upon such exercise of Step-In Rights, including, for example, a legal or other disability affecting MATEP but not affecting the Majority of Current Users or their nominee."

"Dispute" shall mean any dispute between the parties with respect to this Amended Utilities Contract or the matters set forth therein.

"Distribution Cost Components" shall mean the components of the price charged by MATEP to a third party Customer, or to the User by a third party supplier, as the case may be, in the

circumstances contemplated by subsection 21(c) attributable solely to the costs of constructing additional interconnection, transmission or distribution facilities to connect such third party Customer or supplier to MATEP or to the User, respectively.

"Electricity Charge" shall have the meaning set forth in subsection 5(a)(i).

"Escalation Procedures" shall mean the procedures set forth in subsection 15(a).

"Event of Default" shall mean, as to MATEP, any of the events specified in subsection 10(a)(i) and, as to the User, any of the events specified in subsection 10(a)(iii).

"Eversource" means Northeast Utilities d/b/a Eversource Energy and shall include any corporate successor of that company or any regulated public utility which takes over the business of providing electric service to the general public in the area served by the Plant.

"Eversource Tie Lines" shall mean the three (3) tie lines owned by Eversource which run from Eversource's Brighton substation with a nominal capacity rating of 30 MW on October 31, 1997.

"Expansion Operating Practices" shall mean, as to the User, those operational requirements and limitations set forth with specificity by MATEP in its proposed offer of Utilities Service for a User Expansion which MATEP requires for the purpose of preventing the User Expansion from (i) impeding the efficient production and delivery of electricity, chilled water and steam by the Plant to which it is interconnected or by which it is serviced or (ii) impairing the operations, capability or reliability of the Plant to which it is interconnected or by which it is serviced, all as specified as part of the MATEP proposal for services.

"Extended Deficiency Triggering Event" shall mean a Deficiency in Utility service affecting two or more Current Users that continues for a continuous period of 180 days; provided, that no Extended Deficiency Triggering Event shall be an Extended Deficiency Triggering Event if caused by Force Majeure unless the Deficiency caused by such Force Majeure cannot be cured by MATEP but can be cured by the Majority of Current Users or their nominee upon such exercise of Buy-Out Rights, including, for example, a legal or other disability affecting MATEP but not affecting the Majority of Current Users or their nominee.

"Force Majeure" shall mean any unforeseeable event beyond the control, and not caused by the fault or negligence, of the affected party or its agents or affiliates, including flood, drought, earthquake, tornado, lightning, fire, explosion, war, riot, civil disturbances, third-party strikes or other labor stoppages by third parties, sabotage by third parties, or similar cataclysmic occurrences.

"Harvard" shall have the meaning set forth in the first paragraph of the portion entitled "Introduction".

"HIM Chiller" shall mean the equipment and systems used in the production of chilled water located on October 31, 1997 at the Harvard Institutes of Medicine, owned by Harvard, and leased to Harvard pursuant to the Lease Agreement dated as of February 27, 1996, between

Harvard for Harvard Institutes of Medicine and Medical Area Total Energy Plant, Inc., as amended as of September 30, 2015.

"Hospitals and Clinics" shall have the meaning set forth in the first paragraph of the portion entitled "Introduction."

"Immediate Triggering Event" shall mean an Event of Default with respect to bankruptcy or insolvency of MATEP, failure by MATEP diligently to restore the Plant upon a Material Casualty, or abandonment of the Plant by MATEP, each as described more particularly in subsection 10(a)(i)(C), subsection 10(a)(i)(E), or subsection 10(a)(i)(F), respectively, .

"Incremental Capacity" shall have the meaning set forth in subsection 5(c)(A)(1).

"Initial Term" shall mean the initial term, as described in subsection 21(a).

"Interest Rate" shall mean the "base rate" from time to time charged by Bank of America, N.A., or its successor plus 1% per annum.

"Lenders" shall mean the financial institutions providing Permitted Debt to MATEP or any affiliate of MATEP to finance the ownership, operation, and maintenance of the Plant.

"Liquidated Damages" shall have the meaning set forth in subsection 10(b).

"LMEC" means Longwood Medical Energy Collaborative, Inc., a Massachusetts not-for-profit corporation formed pursuant to M.G.L. ch. 180, and any direct or indirect successor entity.

"Major Dispute" shall have the meaning set forth in subsection 15(a)(ii).

"Majority of Current Users" shall mean a weighted majority of the Current Users, the vote of each Current User being weighted in the proportion that the Utility costs billed to such Current User by MATEP or its agents or representatives in the previous complete fiscal year of the Plant bears to the Utility costs billed to all Current Users in such previous complete fiscal year.

"MATEP" shall mean MATEP, LLC, a Delaware limited liability company.

"Material Casualty" shall mean (i) any damage to the Plant, the Dana-Farber Chiller, or the HIM Chiller which is expected to cause the actual capability of the Plant to produce and deliver Utilities to be reduced in the aggregate by more than 10% of the Committed Capability with respect to any Utility service, or (ii) any material damage to any boiler, turbine, generator, steam line, or cooling tower.

"Maximum Available Capacity" shall have the meaning set forth in subsection 5(c)(ii).

"Owner Price" shall have the meaning set forth in subsection 2(b)(i)(A)(1).

"Permitted Debt" shall mean all "Secured Obligations" (as defined in subsection 13(d)) (including principal, accrued interest, fees, and penalties) due to the Lenders and secured by the Plant Assets and meeting the requirements set forth in (x) subsection 13(d) or (y) if applicable, Section 3.5.1 of Appendix G.

"Plant" shall have the meaning set forth in the first paragraph of the portion entitled "Introduction".

"Plant Assets" shall mean the Plant, the Plant site, the Plant Contracts, the Plant permits, the Plant insurance policies, the HIM Chiller, the Dana-Farber Chiller, the Back-Up Distribution System, MATEP's rights to the Eversource Tie Lines, and all materials and supplies, equipment, tools, utilities, spare parts, fuel, drawings, manuals, operating records, accounts, contract rights, and other assets of MATEP (whether held directly or indirectly and whether owned legally or beneficially) necessary to, or used by MATEP in, the operation of the Plant and the provision of the Utilities to the Customers of MATEP (including the provision of Utilities to the User under this Amended Utilities Contract).

"Plant Expansion" shall mean any addition to or modification of the Plant (other than routine maintenance, major maintenance, repair, restoration, or any minor modification or addition) made after the Amendment Effective Date that has the effect of increasing the capability of the Plant to produce and deliver over its distribution system additional steam, electricity, or chilled water beyond the Committed Capability."

"Plant Contracts" shall mean each Utilities Contract with each Current User, each contract for supply or transportation of fuel or other utilities to the Plant, each agreement for transmission or distribution of Utilities to a Current User, and each material service contract with equipment manufacturers or vendors, but excluding, for avoidance of doubt, each operating and maintenance contract, management contract, consulting contract, contract with an affiliate of MATEP, and contract not material to the operations or maintenance of the Plant.

"Prudent Operating Practices" shall mean, as to MATEP:

> Compliance with prudent utility practices and good engineering practice, and all applicable laws, codes and regulations, and any practices, methods and acts engaged in or approved by a significant portion of the district energy industry for similarly situated production and distribution facilities serving end-user facilities and operations similar to those medical, research and clinical facilities of the Current Users during the relevant time period; the implementation and execution of Prudent Operating Practices shall include any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Prudent Operating Practices as to MATEP is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include good operating practices, methods and acts generally accepted in those portions of the district energy industry in the United States serving end-user facilities and operations similar to those medical, research and clinical facilities and operations carried out in the facilities of the Current

Users.

"Prudent Operating Practices" shall mean, as to the User:

> Compliance with good engineering and operating practices and all applicable laws, codes and regulations, and any practices, methods and acts engaged in or approved by a significant portion of end-user operating entities with facilities similar to the medical, research and clinical facilities of the Current Users that are interconnected to and serviced by a district energy facility in the United States during the relevant time period; the implementation and execution of Prudent Operating Practices shall include any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could reasonably have been expected to accomplish the desired result consistent with requirements for reliability, safety and expedition. "Prudent Operating Practices" as to the User is not intended (a) to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted for end-user operating entities with facilities similar to those medical, research and clinical facilities of the Current Users that are interconnected to or serviced by a district energy facility in the United States or (b) to require material change in the Users' prior manner of operating its facilities under the RUC.

"Replacement Obligations" shall mean obligations incurred by the User to obtain replacement service with respect to a Deficiency, as described in subsection 10(g).

"Replacement Operator" shall mean an entity (other than MATEP or an affiliate of MATEP, or the operator of the Plant at the time of a Deficiency Triggering Event or of an Extended Deficiency Triggering Event) designated by the Lenders to operate and maintain the Plant as provided in subsections 1.2 or 2.2 of Appendix G.

"Representatives" means the respective managers, directors, officers, employees, attorneys, accountants and technical consultants and engineers of the User and MATEP and their respective Affiliates.

"RUC" shall have the meaning set forth in the opening paragraph of this Amended Utilities Contract.

"Specifications" shall mean the specifications set forth on Appendix B.

"Steam Charge" shall have the meaning set forth in subsection 5(b)(i).

"Step-In Procedures" shall mean the procedures set forth on Appendix G.

"Step-In Rights" shall mean the right of the Majority of Current Users or their nominee to direct the operation and management of the Plant in place of, and as agent for, MATEP, as set out more fully in subsection 10(d) and Parts 1 and 3 of Appendix G.

"Step-Out" shall mean the relinquishment of managerial and operational direction of the Plant

by the Majority of Current Users to MATEP, the Lenders, or the Replacement Operator, as the case may be, as provided in Part 1 of Appendix G to this Amended Utilities Contract.

"Subsection 5(b)(i) Base Period" shall have the meaning set forth in subsection 5(b)(i).

"Subsection 5(b)(ii) Base Period" shall have the meaning set forth in subsection 5(b)(ii)(a).

"Subsection 5(b)(ii) Base Rate" shall have the meaning set forth in subsection 5(b)(ii).

"Term" shall mean the Initial Term, plus any extension of the Initial Term made pursuant to subsection 21(b).

"Tie Line Capacity" shall mean the electrical transmission or distribution capacity of the Eversource Tie Lines, which on October 31, 1997 was equal to a nominal capacity rating of 30 MW.

"Triggering Event" shall mean a Deficiency Triggering Event or an Immediate Triggering Event.

"User" shall mean The Brigham and Women's Hospital, Inc.

"User Expansion" shall mean any new User facility, including one which replaces an existing User facility, or any addition which increases the square footage of an existing User facility served by the Plant; provided, that (a) nothing in this definition shall derogate from the rights of the User with respect to acquisitions covered by subsection 2(a)(ii), and (b) MATEP is not required to provide Utilities in excess of the Committed Capability.

"Utilities " shall mean steam, electricity, or chilled water, individually or collectively, meeting the Specifications.

"Utilities Contracts" shall mean this Amended Utilities Contract together with each other Amended Utilities Contract, dated as of September 30, 2015, between MATEP and each other Current User (each a "Utilities Contract").

"Utility Charge" shall have the meaning set forth in the initial paragraph of Section 5.

"Veolia" means Veolia Energy Boston, Inc. and shall include any corporate successor of that company or any company providing steam to the general public from fossil fuel-burning plants in generally the area of Boston now served by Veolia.

Appendix B

SPECIFICATIONS

ELECTRICITY SPECIFICATION[1]

	Nominal	Minimum	Maximum	Permissible Excursion
Voltage	13,800	13,600	14,200	Can vary no more than 5% above maximum or below minimum for not more than 15 minutes
Frequency (Hertz)	60	60	60	Maximum frequency changes of +/- 0.4 Hertz to 2 second maximum time error per day with a manual 24 hour adjustment.
Short Circuit Duty[2]	470 MVA	N/A	N/A	
Voltage Flicker	N/A	N/A	+/- 3%	

[1] The system will supply 13,800 volt, 3-phase, 3-wire, 60 Hertz alternating current. All direct connected medium voltage switchgear must be rated 15 KV and 500 MVA. Specifications for electricity are measured at the main switchgear of the Plant.

[2] This is based on the electrical system in the Plant.

CHILLED WATER SPECIFICATION[3]

	Nominal	Minimum	Maximum	Permissible Excursion
Supply Pressure	120psig	115psig	150psig	Can vary no more than 5% above maximum or below minimum for not more than 60 minutes.
Return Pressure	80psig	75psig	90psig	
Supply Temperature	40°F	39°F	44°F	Can vary no more than 5% above maximum or below minimum for not more than 60 minutes.
Return Temperature	55°F	55°F	N/A	Subject to charge calculated as in subsection 5(d) of this Amended Utilities Contract.

[3] Specifications for chilled water are measured at the main header of the Plant.

STEAM SPECIFICATION[4]

	Nominal	Minimum	Maximum	Permissible Excursion
Supply Pressure	120psig	110psig	135psig	Can vary no more than 5% above maximum or below minimum for not more than 30 minutes.
Temperature[5]	360°F	350°F	370°F	No excursion above maximum or below minimum permitted.
Total Dissolved Solids	N/A	N/A	2.0ppm	Can vary no more than 10% above maximum for not more than 30 minutes.
Sodium	N/A	N/A	1.0ppm	Can vary no more than 10% above maximum for not more than 30 minutes.

[4] Specifications for steam are measured at the main header of the Plant.
[5] Steam Temperature is based on saturation with a maximum of 10°F superheat at the Plant.

CONDENSATE SPECIFICATION[6]

	Nominal	Minimum	Maximum	Permissible Excursion
Pressure	20psig	N/A	60psig	
Temperature	160°F	150°F	170°F	Can vary no more than 5% above maximum for not more than 30 minutes.
Conductivity	1μMHO	N/A	8μMHO	Can vary no more than 5% above maximum for not more than 30 minutes.
PH	6.0	5.5	9.2	No excursion above maximum or below minimum permitted.
Silica	N/A	N/A	40PPB	

[6] Condensate Specification is for User return condensate, and is not a Plant specification. Therefore it is not subject to liquidated damages, but will be the standard for rejecting condensate and potential customer price adjustment or compensation. See subsection 5(d) of this Amended Utilities Contract.

Appendix C

INSURANCE

MATEP shall maintain insurance in accordance with the schedule below and may self-insure for all or any part of such insurance (subject to the proviso to the first sentence of subsection 11(a) and to subsection 11(b)).

Type:	Minimum Coverage[1]:	Increases:
Commercial General Liability	$75 million	Limits reviewed every 5 years in consultation with User
Failure to Supply and Blackout/Brownout	$35 million	Limits reviewed every 5 years in consultation with User
Property, including business interruption coverage, extra expense, ICC and demolition	replacement cost	Increased annually to reflect changes to replacement cost
Boiler and Machinery, including business interruption coverage and extra expense	replacement cost	Increased annually to reflect changes to replacement cost
Worker's Compensation	statutory limit	Limits reviewed every 5 years in consultation with User
Auto liability	$5 million/person, $10 million/accident	Limits reviewed every 5 years in consultation with User
Fidelity	$2 million	Limits reviewed every 5 years in consultation with User
Pollution	$50 million	Limits reviewed every 5 years in consultation with User

[1] Minimum coverage shall be available to the Plant whether or not coverage is provided under "blanket" policies.

Appendix D

COMMITTED CAPABILITY

Committed Capability shall mean the capability of the Plant, including its distribution systems, to produce and deliver Utilities to all customers on October 31, 1997, as set forth in the table in Part I below, subject to the conditions set forth in Part II below.

I. Committed Capability

Utility	Capability
Electricity	62.8 MW
Steam	550,000 lbs/hr
Chilled Water	38,925 Tons

II. Conditions

- Provision of electricity may require reliance on Eversource Tie Lines under some operational circumstances.

- Steam capability is based on distribution limits of combined steam headers and minimum 84% condensate return.

- Chilled water capability is limited by cooling tower capacity on October 31, 1997, with a design wet bulb temperature of 74°F and a cooling water temperature of 85°F, and includes the capability of the Dana-Farber Chiller and the HIM Chiller. Chilled water capability equals the sum of the Maximum Available Capacities of all Current Users under their respective RUCs as of October 31, 1997; subsequent to such date certain of the Current Users' Maximum Available Capacities ("MAC") were increased pursuant to subsection 5(c)(ii) and two Users reallocated MAC in connection with the transfers of certain buildings (collectively, the "RUC MAC Increase and Adjustment"). The Maximum Available Capacity (reflecting any RUC MAC Increase and Adjustment) is set forth in subsection 5(c)(ii) of each User's respective Amended Utilities Contract, and is subject to the provisions of Section 5 of the Amended Utilities Contract. Chilled water capability shall not be increased due to any RUC MAC Increase and Adjustment or any increase in the Maximum Available Capacity of any Current User after the Amendment Effective Date as provided in subsection 5(c)(ii) of this Amended Utilities Contract.

- Committed Capability is subject to scheduled outages of production equipment and to Force Majeure.

Appendix E

LIQUIDATED DAMAGES

Hours of Outages Per Month[1]	Amount[2]
First 3 hours or part thereof	No Charge
Next 6 hours or part thereof	$500/hour
Next 36 hours or part thereof	$1,500/hour
Next 54 hours or part thereof	$2,000/hour
Additional hours or part thereof	$5,000/hour

[1] Hours are for each Deficiency in the provision of one or more of steam, electricity, or chilled water service per User. All dollar amounts shall be adjusted as of each October 1 after June 1, 1998 in proportion to the change in the CPI since the prior October 1.

[2] Subject to the limit set forth at subsection 10(b)(ii) of this Amended Utilities Contract.

Appendix F

METERING

(1) Metering Equipment.

a) MATEP shall supply, own, and maintain the metering equipment necessary to record the quantity of the Utilities, as well as the temperature and pressure of the steam and chilled water, furnished to the User by Harvard, and to record the quantity, temperature and pressure of chilled water and condensate returned by the User to the Plant.

The metering equipment for steam and chilled water shall be located at or near the delivery point for such Utilities or, upon mutual agreement of MATEP and the User, at another more convenient location. The metering equipment for electricity shall be located on the User's premises with the exact location to be mutually agreed upon by the parties hereto; provided, however, that the User shall provide MATEP and its operating agent reasonable access to such metering equipment for purposes of reading, maintaining, replacing, or repairing the same.

b) In addition to such metering equipment, MATEP shall supply, at the User's expense, the equipment necessary to provide to the User remote pressure, temperature and flow signals for steam and chilled water and to provide remote pulse signals for electricity.

The User shall own and maintain such equipment.

The User shall likewise supply, own and maintain the equipment necessary to receive such signals as well as the wiring interconnecting such equipment to MATEP's equipment providing the signals.

(2) Reading of Meters.

Meter readings for billing purposes are received electronically. The User shall have the right, by giving reasonable advance notice to MATEP, to have its representative review telemetering data during normal business hours.

(3) Testing.

a) MATEP shall, at its own cost and expense, have all the meters as well as the equipment providing the remote signals to the User tested and certified for accuracy by an independent, qualified third party mutually acceptable to MATEP and the User at least once every calendar year. Each such testing and certification shall be conducted with reference to the standards of the manufacturer of the measuring devices, as such standards may change from time to time in accordance with industry practices for the equipment involved. MATEP shall provide the User with reasonable advance notice of each such test, and shall allow the User's representative to be present and witness the same.

MATEP shall provide the User with a written report of each such test and certification promptly upon completion thereof.

b) If either MATEP or the User shall at any time believe that any meter electronically registers incorrectly, it shall notify the other party of its desire to have a special test of such meter conducted. Such special test shall be conducted on a date and time mutually acceptable to MATEP and the User, and in accordance with the procedures and requirements set forth in Section 3(a) of this Appendix F. The expense of any User-requested special test shall be borne by the User unless upon such testing a meter is found to register beyond the permissible limits of error set forth in Section 3(c) of this Appendix F.

c) Each meter shall be deemed to be working satisfactorily, and the recordings thereof shall be deemed acceptable for billing purposes, if it is found to register inaccurately by no more than +/- 2% at the meter.

(4) Adjustments for Inaccurate Meters.

a) If a meter fails to register, or if the measurement made by a meter is found to be inaccurate upon an annual or special test check by more than the permissible limits of error set forth in Section 3(c) of this Appendix F, such meter immediately shall be calibrated, repaired or replaced, and an adjustment shall be made correcting all measurements by the defective or inaccurate meter for billing purposes as set forth in Sections 4(b) and 4(c) of this Appendix F. Each such adjustment shall be for both the amount of the inaccuracy and the period of the inaccuracy.

b) An adjustment shall be made correcting all measurements by a defective or inaccurate meter for billing purposes as follows:

(i) MATEP and the User shall attempt in good faith to agree upon an estimate of the adjustment necessary to correct the measurements made by such meter on the basis of all available information, including such guidelines as may have been agreed upon by the parties;

(ii) in the event that MATEP and the User cannot agree on the amount of the adjustment necessary to correct the measurements made by such meter, they shall estimate the amount of the necessary adjustment on the basis of the amount of the inaccuracy as reflected by the latest test check of such meter or, in the case of a defective meter, on the basis of deliveries of the relevant Utility or returned condensate or chilled water during periods of similar operating conditions when such meter was found to be defective;

(iii) in the event that MATEP and the User cannot agree on the actual period during which the inaccurate measurements were made or when a meter was defective, the period during which the measurements are to be adjusted shall be deemed to have begun on the date which is the earlier of (A) the date midway between the date the meter was found to be defective or inaccurate and the date of the last annual or special test check of such meter, and (B) the date one year prior to the last day of such period; and

(iv) the difference between the previous payments by the User for the period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to MATEP under this Amended Utilities Contract.

c) Billings for the period beginning on such test date until the next annual test check

shall be in accordance with the calibrated or repaired meter.

(5) Audit of Metering Equipment and Billing Procedures.

The User shall have the right to conduct an annual audit of the metering equipment and the billing procedures, at its own cost and expense, upon reasonable advance notice to MATEP, and to the extent requested in such notice.

Appendix G

STEP-IN PROCEDURES

Part 1. Step-In Rights

1.1 Exercise of Step-In Rights.

1.1.1 If an Immediate Triggering Event shall have occurred, the Majority of Current Users or their nominee shall have the right to exercise Step-In Rights immediately upon notice to MATEP.

1.1.2 In the event of a Deficiency in Utility service affecting two or more Current Users for a period of 120 hours, or for an aggregate period of 120 hours in any 30-day period, that if continued would give rise to a Deficiency Triggering Event, the Majority of Current Users may deliver to MATEP a Deficiency Notice.

Notwithstanding the provisions of Section 18 of the Amended Utilities Contract, a Deficiency Notice transmitted by facsimile, electronic or digital transmission otherwise complying with the provisions of Section 18 of the Amended Utilities Contract shall be deemed to have been duly given when trans- mitted, whether received before or after 5:00 p.m. Boston, Massachusetts time, subject to the recipient confirming by telephone that the recipient has received the notice.

1.1.3 Unless MATEP or the Lenders shall have submitted a Cure Plan conforming with the respective requirements of Section 1.2 of this Appendix G, the Majority of Current Users or their nominee also may exercise Step-In Rights as follows:

(i) if the Deficiency which may give rise to a Deficiency Triggering Event involves the loss of one or more Utilities, then Step-In Rights may be exercised upon the later of (A) the time 48 hours after delivery of such Deficiency Notice, or(B) the actual occurrence of the Deficiency Triggering Event; or

(ii) if the Deficiency which may give rise to a Deficiency Triggering Event does not involve the loss of one or more Utilities, then Step-In Rights may be exercised upon the later of (A) the time 30 days after delivery of such Deficiency Notice, or (B) the actual occurrence of the Deficiency Triggering Event.

For purposes of this Section 1.1.3 of this Appendix G, a "loss of one or more Utilities"

shall). be deemed to have occurred if there is (x) a reduction in the quantity of one or more Utilities delivered to such Users from that required by their respective Utilities Contracts or (y) a deviation from the Specifications with respect to one or more Utilities, which in either event significantly impairs the ability of such Users to perform a key function of such Users' operations that are supported by one or more of the Utility services during the period of time giving rise to the Deficiency Triggering Event.

1.2 Cure Plans by MATEP or the Lenders. At any time prior to or during the exercise of Step-In Rights:

1.2.1 In the case of a Deficiency Notice or a Deficiency Triggering Event, MATEP may submit to the Current Users a Cure Plan. If such Cure Plan contains MATEP's undertaking to use its best efforts to remedy the causes of the Deficiency Triggering Event, and to prevent or cure such Deficiency Triggering Event, as soon as practicable (where "best efforts" shall mean all efforts which are Commercially Reasonable but without regard to Cost Limitations), then the Majority of Current Users or their nominee shall suspend the exercise of Step-In Rights (or, if prior to the exercise of Step-In Rights, shall refrain from exercising Step-In Rights) so long as MATEP diligently pursues such Cure Plan and prevents or cures the applicable Deficiency Triggering Event and its causes within the time period set forth in the Cure Plan..

1.2.2 In the case of any Triggering Event, if the Lenders shall have foreclosed upon the Plant or exercised any other remedy requiring possession and control of the Plant by such Lenders, and shall have designated a Replacement Operator to operate and maintain the Plant, the Lenders may submit to the current Users a Cure Plan. The Majority of current Users shall accept the Lenders' cure Plan and Step-Out (or, if prior to the exercise of Step-In Rights, shall refrain from exercising Step-In Rights), as reasonably provided in the Lenders' Cure Plan, if the Replacement Operator is reasonably qualified and experienced in the operation and maintenance of facilities similar to the Plant.

1.2.3 Upon resuming or assuming direction of the Plant's operation and maintenance under a Cure Plan, MATEP or the Replacement Operator, as the case may be, diligently and expeditiously shall cure the Deficiency Triggering Event and its causes.

1.3 Performance of Contractual Obligations. During the exercise of Step-In Rights, the following shall apply:

1.3.1 The User shall continue to perform its contractual obligations under the Amended Utilities Contract.

1.3.2 The Majority of Current Users or their nominee shall, in consultation with and at the request of MATEP, use good-faith efforts to pursue a cure of the causes of the Deficiency Triggering Event. The costs of such efforts to cure shall be borne by MATEP so long as such costs were prudent in amount under the circumstances.

1.3.3 The Majority of Current Users or their nominee shall use good-faith

efforts to comply with the requirements of the Plant Contracts and the Plant permits; provided, however, that (i) the costs of such compliance shall be borne by MATEP (through the application of funds pursuant to Section 1.4.1 of this Appendix G or otherwise); and (ii) the Current Users at no time shall have any obligation to cure past defaults by MATEP of its obligations under such Plant Contracts or under any other contract, instrument or arrangement of MATEP or relating to the Plant, or to assume any liability under such Plant Contracts or other such contracts, instruments or arrangements.

1.4 Application of Funds.

1.4.1 During the exercise by the Majority of Current Users of Step-In Rights, the User shall continue to be liable for all amounts due to MATEP under the Amended Utilities Contract. The Majority of Current Users (or their nominee) on behalf of MATEP shall receive and apply such amounts, and all other receipts of MATEP related to the Plant (including amounts due from other Current Users under corresponding Utilities Contracts, and insurance proceeds and condemnation awards), in the following order of priority: (i) first, to such Majority of Current Users, as reimbursement (without duplication) for all costs and expenses actually incurred in exercising Step-In Rights (including in complying with the requirements of the Plant Contracts and Plant permits) and curing the applicable Triggering Event; (ii) second, to the Lenders, in the amounts required under outstanding debt instruments with respect to Permitted Debt; (iii) third, subject to Section 11 of each of the Current Users' respective Amended Utilities Contracts, to compensate the Current Users for any damages to which they may be entitled under their respective Utilities Contracts, whether incurred prior to or after the exercise of Step-In Rights; and (iv) fourth, to MATEP.

1.4.2 For avoidance of doubt:

(i) the User shall not be entitled to Liquidated Damages under subsection 10(b) of the Amended Utilities Contract that otherwise would accrue with respect to any period during which the Majority of Current Users shall have exercised Step-In Rights; and

(ii) the right of the Majority of Current Users to pay costs, expenses and damages as provided in Section 1.4.1 of this Appendix G shall not be construed as a waiver of any claim the User may have against MATEP in the event such amounts are insufficient to pay the total amount of such costs, expenses and damages.

1.5 No Transfer of Title. In no event shall the Majority of Current Users' election to exercise Step-In Rights be deemed to constitute a transfer of title to the Plant or a transfer or assumption of any of MATEP's obligations or liabilities to any Current User, the Lenders, the counterparties to any Plant Contract, or to any other person, by any Current User or the nominee of the Majority of Current Users, whether such obligations or liabilities arise out of ownership or operation of the Plant or otherwise.

1.6 Liability. Subject to the provisions of Section 1.4 of this Appendix G, in the event that the Majority of Current Users elect to exercise Step-In Rights, they shall have no

liability to MATEP in connection therewith, including any liability for costs and expenses of operating and maintaining the Plant, for any and all damages to person or property resulting from the Plant's operation and maintenance, or for debt service to the Lenders or any other obligation of MATEP with respect to the Plant, except for the gross negligence or willful misconduct by any party acting on behalf of the Current Users in connection with the exercise of Step-In Rights.

1.7 Agency. In the exercise of Step-In Rights, MATEP irrevocably appoints the Majority of Current Users or their nominee to act as MATEP's agent, and shall be authorized in such capacity to take all such actions as MATEP would be authorized to take if it were operating the Plant in compliance with the Amended Utilities Contract.

1.8 Step-Out.

1.8.1 Rights, the Majority operate and maintain the following:

Following an exercise of Step-In of Current Users or their nominee shall the Plant until the first to occur of

(i) in the case of a Deficiency Triggering Event, such Deficiency Triggering Event, and the causes of such Deficiency Triggering Event, shall have been cured and could not reasonably be expected to resume upon Step-Out;

(ii) MATEP or the Lenders shall have submitted a Cure Plan meeting the respective requirements of Section 1.2 of this Appendix G and shall be pursuing such Cure Plan as provided in such Section 1.2; or

(iii) the Majority of Current Users shall have elected to Step-Out, by 10 days' notice to MATEP.

1.8.2 For avoidance of doubt, Step-Out by the Majority of Current Users pursuant to any of the provisions of Section 1.8.1 of this Appendix G, or the act of the Majority of Current Users in refraining to exercise Step-In Rights pursuant to Section 1.2 of this Appendix G, shall not be construed as a waiver of any right or remedy available to the User under the Amended Utilities Contract.

Part 2. Buy-Out Rights

2.1 Exercise of Buy-Out Rights.

2.1.1 If an Immediate Triggering Event shall have occurred, the Majority of Current Users or their nominee shall have the right to exercise Buy-Out Rights immediately upon notice to MATEP; provided, that solely in the case of an Immediate Triggering Event

relating to failure to commence diligent efforts to undertake the restoration work required under Sections 10(a)(i)(E)(1) or subsection 11(c) of the Amended Utilities Contract, the Majority of Current Users shall not exercise Buy-Out Rights unless MATEP shall have failed to commence such diligent efforts after 7 days' notice from the Majority of Current Users.

2.1.2 In the event of a Deficiency in Utility service affecting two or more Current Users for a continuous period of 150 days, the Majority of Current Users may deliver to MATEP a Buy-Out Notice.

2.1.3 Unless MATEP or the Lenders shall have submitted a Cure Plan conforming with the respective requirements of Section 2.2 of this Appendix G, the Majority of Current Users or their nominee also may exercise Buy-Out Rights upon the later of (i) the time 30 days after delivery of the Buy-Out Notice, and (ii) the actual occurrence of the Extended Deficiency Triggering Event.

2.2 Cure Plans by MATEP or the Lenders.

2.2.1 In the case of a Buy-Out Notice or an Extended Deficiency Triggering Event, MATEP may submit to the Current Users a Cure Plan at any time prior to the exercise of Buy-Out Rights. If such Cure Plan contains MATEP's undertaking to use its best efforts to remedy the causes of the Deficiency which was the subject of the Buy- out Notice and to prevent or cure the applicable Extended Deficiency Triggering Event, as soon as practicable (where "best efforts" shall mean all efforts which are Commercially Reasonable but without regard to Cost Limitations), then the Majority of Current Users or their nominee shall refrain from exercising Buy-Out Rights so long as MATEP diligently pursues such Cure Plan, prevents or cures the applicable Extended Deficiency Triggering Event and cures such Deficiency and its causes within the time period set forth in the Cure Plan.

2.2.2 In the case of any Buy-Out Triggering Event, if the Lenders shall have foreclosed upon the Plant or exercised any other remedy requiring possession and control of the Plant by such Lenders, and shall have designated a Replacement Operator to operate and maintain the Plant, the Lenders may submit to the Current Users a Cure Plan at any time prior to the exercise of Buy-Out Rights. The Majority of Current Users shall accept the Lenders' Cure Plan and shall refrain from exercising Buy-Out Rights, as reasonably provided in the Lenders' Cure Plan, if the Re- placement Operator is reasonably qualified and experienced in the operation and maintenance of facilities similar to the Plant; provided, however, that the Majority of Current Users may exercise Buy-Out Rights notwithstanding such Lenders' Cure Plan if the Current Users assume or guarantee the Permitted Debt as contemplated by the proviso to Section 3.5.1 of this Appendix G.

2.2.3 Upon resuming or assuming direction of the Plant's operation and maintenance under a Cure Plan as provided in this Section 2.2 of this Appendix G, MATEP or the Replacement Operator, as the case may be, diligently and expeditiously shall cure the causes of the Buy-Out Triggering Event or the Deficiency which was the subject of the Buy-Out Notice.

2.2.4 For avoidance of doubt, the act of the Majority of Current Users in refraining from exercising Buy- out Rights pursuant to the provisions of Sections 2.1 or 2.2 of this Appendix G shall not be construed as a waiver of any right or remedy available to the User under the Amended Utilities Contract.

2.3 Appraisal Procedure. Upon a Buy-Out Triggering Event, MATEP and the Majority of Current Users each shall appoint an independent appraiser, each of whom shall determine within 15 days of the Buy-Out Triggering Event the fair market value of the Plant Assets, where "fair market value" shall be the price that a buyer (other than MATEP or any Current User) who is not under compulsion to buy would be willing to pay for the Plant Assets unencumbered by any liabilities. If the appraisers agree on such fair market value, the agreed value shall be the fair market value. If they disagree, either MATEP or the Majority of Current Users may apply to the American Arbitration Association in Boston, Massachusetts to appoint a third independent appraiser, who shall appraise the fair market value within 15 days, and the fair market value shall be deemed to be the average of the two numerically closest values or, if the values are equidistant, the middle value. If either MATEP or the Majority of Current Users fails to appoint an appraiser, or if the appraisal to be prepared by the appraiser appointed by MATEP or the Majority of Current Users is not delivered to the other party by the date 15 days after the Buy-Out Triggering Event, then the value determined by the other appraiser shall be the fair market value.

2.4 Closing. The closing of the exercise of Buy- out Rights shall occur on a Business Day and at a place in Middlesex County or Suffolk County, Massachusetts designated by the Majority of Current Users at least 30 days (but no more than 90 days) after delivery of the Buy-Out Notice. From the date of a Buy-Out Notice until such closing the parties shall continue to perform all their obligations under the Amended Utilities Contract. At such closing:

2.4.1 The Majority of Current Users or their nominee shall pay to MATEP the Buy-Out Price in immediately available funds.

2.4 .2 The Plant Assets shall be assigned to the Majority of Current Users or their nominee, free and clear of liens and encumbrances other than those that secure the Permitted Debt.

2.4 .3 The Majority of Current Users or their nominee shall assume (i) the Assumed Liabilities, (ii) the obligations of MATEP under the Plant permits relating to the period after such closing, and (iii) the Permitted Debt.

Part 3. General Provisions

3.1 Relations among the Current Users. In exercising any right or power set forth in this Appendix G, the Current Users may act according to any procedure, and upon any terms and conditions, as the Majority of Current Users may agree from time to time; provided, that such procedures, terms and conditions shall be consistent with the other provisions of the Amended Utilities Contract (including this Appendix G).

3.2 Turn-Over by MATEP. Upon and during the exercise by the Majority of

Current Users or their nominee of Step-In Rights or Buy-Out Rights, as the case may be, MATEP shall, and shall cause the Plant's operator (and any other person or entity within the control of MATEP) to:

(i) give the Majority of Current Users or their nominee access to and direction of the operation and maintenance of the Plant to the extent necessary to enable the Majority of Current Users or their nominee to exercise Step-In Rights or Buy-Out Rights, as the case may be; and

(ii) cooperate in effecting an orderly transfer of such operation and maintenance, including transfer of the Plant Assets.

3.3 Insurance Proceeds. Upon exercise of Step-In Rights or Buy-Out Rights, insurance proceeds and self- insured (or deductible) amounts described in subsection 11(c) of the Amended Utilities Contract shall be assigned to the Majority of Current Users or their nominee, on behalf of the Current Users, for the purpose of effecting repair or restoration of the Plant.

3.4 Power of Attorney. For purposes of carrying out the provisions of and exercising the rights, powers and privileges granted by subsection 10(d) of the Amended Utilities Contract and this Appendix G, MATEP hereby irrevocably constitutes and appoints the Majority of Current Users or their nominee as its true and lawful attorney- in- fact to execute, acknowledge and deliver any instruments and to do and to perform any acts that are required for the Majority of Current Users or their nominee or their agents or representatives to exercise Step-In Rights or Buy-Out Rights upon the occurrence of a Triggering Event or a Buy- Out Triggering Event, respectively, and to operate and maintain the Plant, including the enforcement of any contracts between MATEP and third parties with respect to the operation or maintenance of the Plant, and the making of any filings with governmental authorities with respect to the operation and maintenance of the Plant, in each case upon and during the continuance of the exercise by the Majority of Current Users or their nominee of Step-In Rights. This power of attorney is a power coupled with an interest and cannot be revoked during the Term. In the exercise of such power of attorney, neither the Majority of Current Users nor their nominee (i) shall exercise any rights with respect to loans or financing arrangements to which MATEP may be a party or by which MATEP or its assets may be bound, or (ii) shall enter any amendment, modification, or supplement to any Utilities Contract with any Current User that reasonably could be expected materially to increase the rights of the Current User which is the counterparty to such Utilities Contract or materially to increase the obligations of MATEP thereunder.

3.5 Restriction on Debt; Relationship with Lenders

3.5.1 Following a Buy Out Notice or an Extended Deficiency Triggering Event, unless and until the causes for such Buy Out Notice or Extended Deficiency Triggering Event have been cured, neither MATEP nor any affiliate of MATEP shall create, assume, or suffer or permit to exist on or with respect to any Plant Assets any lien, mortgage, deed of trust, pledge, charge, easement, encumbrance or other security interest securing any debt, charge, guarantee, liability, or other obligation, or incur, create, assume, or suffer or permit to exist any debt, charge, guarantee, liability, or other obligation secured by the Plant Assets, unless it first

shall have been established that the aggregate total principal amount of such obligations does not exceed 75% of the fair market value of the Plant Assets at the time such obligation or security interest is incurred, created, assumed, or suffered or permitted to exist, pursuant to the following procedure:

(i) Each time that MATEP desires to incur, create, assume or suffer or permit to exist any such security interest or obligation, or to increase the principal amount thereof by an increment of more than $1,000,000 (or by $1,000, 000 in the aggregate since the last determination of the fair market value of the Plant Assets), MATEP shall deliver advance notice to the Majority of Current Users; and

(ii) Except as set forth in subsection 13(d) with respect to financing not related to the exercise of Step-In Rights and Buy-Out Rights by the User, the fair market value shall be determined through an appraisal procedure substantially the same as the procedure set forth in Section 2.3 of this Appendix G (except that the time periods set forth in such Section 2.3 shall be measured from the date of such notice rather than from the occurrence of a Buy-Out Triggering Event).

3.5.2 Notwithstanding any other provision of this Appendix G or in the Amended Utilities Contract to the contrary, the foreclosure rights of the Lenders under any mortgage or security interest of the Lenders with respect to Permitted Debt in the Plant Assets shall take precedence over the Buy-Out Rights set forth in this Appendix G; provided, that the Lenders shall not exercise foreclosure rights if the Current Users agree to assume or guarantee the Permitted Debt upon the exercise of Buy-Out Rights.

3.5.3 MATEP will cause each of the Lenders to acknowledge in a written instrument issued directly to the User the rights of the User and the other Current Users under subsection 10(d) of the Amended Utilities Contract and this Appendix G prior to entering into any financing or security arrangement with any of the Lenders and prior to granting any security interest in the Plant Assets or in any Utilities Contract with any Current User.

3.5.4 The Majority of Current Users shall provide to the Lenders a copy of each Deficiency Notice or Buy-Out Notice and each notice delivered under Section 2.1.2 of this Appendix G, and a copy of the appraisal prepared by the appraiser appointed by the Majority of Current Lenders pursuant to Section 2.3 of this Appendix G.

3.6 Consultation. Without limiting the other provisions of this Appendix G, following the occurrence of any material interruption in Utility service or any significant Deficiency, or the delivery of any Deficiency Notice, MATEP and the Current Users shall consult with each other with regard to the causes thereof and the means to prevent a Deficiency Triggering Event or Extended Deficiency Triggering Event from occurring. MATEP and the Current Users in good faith attempt to agree upon and devise a joint plan for preventing future occurrences of such Deficiencies, Deficiency Triggering Events, and Extended Deficiency Triggering Events.

3.7 Memorandum of Agreement. At the request of the User, a memorandum of the

Step-In Rights will be recorded with the Suffolk County, Massachusetts Registry of Deeds and with the Suffolk County, Massachusetts Registry District of the Land Court.

Appendix H

FORM OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made effective as of _____ ___, 201_, between MATEP LLC, a Delaware limited liability company, having a usual place of business at 474 Brookline Avenue, Boston, Massachusetts 02215 ("MATEP"), and [_____], having a usual place of business at [_____,_____,_____,_____] ("RECIPIENT"), MATEP and RECIPIENT being collectively referred to herein as the "Parties."

WHEREAS, RECIPIENT has requested and/or has been provided certain information, and may request or be provided further information, regarding MATEP and the facilities owned and operated by MATEP for the following Utilities-related purpose [*e.g.*, [for a User Inspection or Audit] relating to the Users' operational, regulatory and accreditation requirements which include, without limitation, assessing operational reliability of the Plant] (the "Disclosure Purpose");

WHEREAS, MATEP considers such requested or provided information to be non-public information and, as such, highly sensitive, confidential and proprietary; and

WHEREAS, MATEP has agreed to deliver such information to RECIPIENT subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, MATEP and RECIPIENT hereby agree as follows:

3. "Confidential Information," as used herein, shall mean all confidential, proprietary or sensitive information of a technical, business or financial nature in any form, including, but not limited to, oral, written, graphic, digital or electromagnetic forms, whether furnished by email, thumb drive or otherwise obtained prior to or after the date hereof, relating to the business or operations of MATEP, including, but not limited to, any such information relating to the operating characteristics and location of the electric, steam or chilled water generation, transmission or distribution system assets of MATEP, and all data, analyses, compilations, presentation materials, studies or other documents relating thereto, whether prepared by MATEP or otherwise, which contain or otherwise reflect such information.

4. RECIPIENT, its directors, officers, employees, subcontractors, representatives, advisors, and agents, shall hold the Confidential Information in trust and confidence, and such information shall be used only in connection with the performance of the Disclosure Purpose. To the extent that Confidential Information is disclosed by RECIPIENT to its employees, subcontractors, advisors or agents, such employees, subcontractors, representatives, advisors and agents shall agree to be bound by the terms of this Agreement and to use such information solely for the Disclosure Purpose. RECIPIENT shall not copy, reproduce, distribute or disseminate any information, image, map, chart, graph, vector or other graphic representation of data that is included in the Confidential Information or use the Confidential Information for any purpose other than the Disclosure Purpose, including, without limitation, selling, marketing, disclosing or transmitting to any third party.

5. RECIPIENT agrees to use and protect the Confidential Information with at least the same degree of care which its treats its own confidential or proprietary information, but not less than a reasonable degree of care. RECIPIENT agrees to restrict access to the Confidential Information to its employees, subcontractors, and others within its organization whose access is reasonably necessary for the performance of the Disclosure Purpose. Such persons to whom the Confidential Information is disclosed shall be informed of the confidential and proprietary nature of such information, and they shall agree to be bound by the terms of this Agreement. RECIPIENT shall be responsible for any breach of the terms of this Agreement by its employees and subcontractors and others to whom it or they have disclosed the Confidential Information.

6. The Confidential Information furnished hereunder shall remain the property of the MATEP. Upon demand by MATEP at any time, all Confidential Information and any and all copies, notes, derivatives or extracts thereof provided by MATEP (including without limitation any thumb drive provided by MATEP to RECIPIENT) shall be promptly returned to MATEP. Upon the request of MATEP, RECIPIENT shall certify via sworn statement by an officer thereof that all Confidential Information and any and all copies, notes, derivatives or extracts thereof and Thumb drive/s have been returned to MATEP.

7. MATEP IS PROVIDING THE CONFIDENTIAL INFORMATION "AS IS" AND MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESSED, OR IMPLIED (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY) REGARDING THE CONFIDENTIAL INFORMATION, INCLUDING, WITHOUT LIMITATION, ITS ACCURACY OR COMPLETENESS. IN NO EVENT WILL MATEP BE LIABLE FOR ANY GENERAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR SPECIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE CONFIDENTIAL INFORMATION.

8. Nothing in this Agreement shall affect the continued proprietary nature of any Confidential Information disclosed hereunder and the protections afforded MATEP for such Confidential Information under applicable law.

9. RECIPIENT agrees that a breach of this Agreement will cause substantial and irreparable injury to MATEP, that money damages will be difficult to ascertain, that remedies at law may be inadequate to protect MATEP, and that accordingly, MATEP is entitled to, among other remedies, the granting of specific performance or other injunctive relief for any actual or threatened breach of this Agreement.

10. In the event that RECIPIENT is requested or required, by subpoena, oral deposition, interrogatories, request for production of documents, administrative order or otherwise, to disclose any Confidential Information, RECIPIENT shall provide MATEP with prompt notice of such request(s), so that MATEP may seek an appropriate protective order or a waiver of compliance with the terms of this Agreement.

11. RECIPIENT shall give immediate notice to MATEP of any incident that may cause the Confidential Information to be disclosed or otherwise used in an unauthorized manner. Such notice shall set forth all relevant information regarding the incident, including the specific nature

and extent of the disclosure/use, and the measures taken and to be taken to retrieve and restore and/or to otherwise prevent the unauthorized use or disclosure of the Confidential Information.

12. This Agreement constitutes the entire agreement of the Parties on the subject of confidential and proprietary information and supersedes all prior understandings or agreements, written or oral, on this subject. This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts. This Agreement shall not be altered or amended except in writing executed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors, assigns, heirs, executors and administrators. This Agreement is not assignable by any Party without the prior express written consent of the other Party, and any attempted assignment without such prior express written consent shall be null and void.

IN WITNESS WHEREOF, MATEP and RECIPIENT have executed this Agreement as of the day and year first above written.

RECIPIENT	MATEP LLC
By: _____	By: _____
Name:	Name: Richard E. Kessel
Title:	Title: President and CEO

Confidential

February 26, 2007

Current Users under the Restated Utilities Contracts,
dated as of October 31, 1997
C/o MASCO, Inc.
375 Longwood Avenue
Boston, MA 02215
Attention: Norva H. Kennard, Esq.

Re: NSTAR Electric Distribution Services Agreement, dated February, 2007 (the "Agreement")

Dear Ms. Kennard:

On behalf of MATEP LLC, I am writing in furtherance of our discussions regarding the above-referenced Agreement, and to confirm certain issues with respect to the potential effect of the Agreement on the various Restated Utilities Contracts dated as of October 31, 1997 (the "RUCs") that exist between MATEP LLC and the Current Users of the MATEP Plant.[1]

MATEP LLC understands that the Current Users are concerned that the exercise by MATEP LLC of its rights under the Agreement may impact the rights of or the level of service provided to the Current Users under the RUCs, or otherwise affect the operation of certain electric equipment that is owned by the Current Users and used by MATEP LLC.

In response to the concerns expressed by the Current Users, MATEP LLC is pleased to provide the following assurances to the Current Users, which shall be effective for the remaining Term of the RUCs (but not following the expiration or termination of the RUCs).

1. Exercise of Rights under the Agreement. MATEP LLC will not exercise any of its rights under the Agreement in contravention of the rights of the Current Users (and the obligations of MATEP LLC) under the RUCs. In connection with the above, MATEP LLC acknowledges that its obligation to provide electricity, steam, chilled water and other services to the Current Users pursuant to the RUCs up to the Committed Capability of the MATEP Plant takes precedence over the provision of electricity or ancillary services to any entity other than a Current User. In this regard, MATEP LLC agrees that it will not exercise its rights under

[1] Except as otherwise defined herein, all capitalized terms have the definition assigned to them in the RUCs.

474 Brookline Avenue Boston, MA 02215
Tel.: (617) 598-2700 Fax: (617) 598-2355
An Exelon subsidiary

the Agreement in a manner that will result in a decrease (as determined in conformance with good utility practice) in the reliability, capability or operations of the MATEP Plant, or in the reliability of electric, steam or chilled water service provided or otherwise available to the Current Users under the RUCs.

2. Export of Electric Power over Current User Facilities. MATEP LLC and the Current Users acknowledge that *de minimis* exports of electric power from the MATEP Plant to the BECO Tie Lines occur through the electric switchgear, electric lines and other electric equipment owned by the Current Users (collectively, for each Current User, the "Current User Facilities") solely for the purpose of balancing line voltages (such *de minimis* exports, the "*De Minimis* Exports"). In addition to the foregoing, MATEP LLC and the Current Users agree that MATEP LLC shall be entitled to export additional power (an "Additional Export") that is generated at the MATEP Plant over and through all of the Current User Facilities to the BECO Tie Lines during the Term of the RUCs, subject to the following.

   a). An Additional Export shall occur only pursuant to a request issued by ISO-NE and in conformance with ISO-NE's rules associated with the Forward Reserve Market and/or the Forward Capacity Market, as applicable.

   b). The total electric current on any of the Current User Facilities shall not exceed 450 amps during any Additional Export.

   c). The Additional Exports shall be at MATEP LLC's sole risk, cost and expense.

   d). MATEP LLC shall be responsible for any damage to any of the Current User Facilities that occurs as a result of the Additional Exports, and shall hold harmless and indemnify each of the Current Users with respect to any such damage, including the cost of repair of such damage.

   e). The Current Users shall have no liability or obligations under the Agreement or associated with any Additional Export by MATEP LLC, and MATEP LLC shall hold harmless and indemnify each of the Current Users with respect to any claims against any of the Current Users that arise under or are related to the Agreement or the Additional Exports, including but not limited to claims associated with any transaction(s) entered into by MATEP LLC with respect to such exports.

   f). The parties acknowledge and agree that in the event a Current User reasonably determines that it needs to perform maintenance or other action with respect to its Current User Facilities, including but not limited to de-energizing, modifying, or decommissioning

such Current User Facilities, the Current User shall provide such prior notice to MATEP LLC as is reasonable under the circumstances, and shall schedule such action at a mutually agreeable time (except in the case of an emergency). Notwithstanding the above, it is agreed that such action shall take precedence over any Additional Export by MATEP LLC over such Current User Facilities, and the Current User shall have no liability with respect to the effect of such action on any such Additional Export. For the avoidance of doubt, the parties agree that if a Current User postpones or reschedules any such maintenance or other action at the request of MATEP LLC solely to accommodate an Additional Export, MATEP LLC shall promptly reimburse the Current User for all reasonable third-party out-of-pocket costs incurred by the Current User in connection with such postponement or rescheduling.

g). In consideration of the agreement of each Current User for the use of its respective Current User Facilities by MATEP LLC for Additional Exports, MATEP LLC shall pay to each Current User, as a credit applied to the monthly invoice for electric charges transmitted by MATEP LLC to each Current User, for each Additional Export a fee of 1.00 cent for each kilowatt-hour of energy that is exported by MATEP LLC through each of the individual Current User Facilities of that Current User (as determined by measurement at the existing revenue quality meters located on each end of such Current User Facilities, which meters will be operated and maintained by MATEP LLC at its sole cost and expense, and from which interval metering data can be derived). For the avoidance of doubt, no fee or other compensation is to be paid to the Current Users for any of the *De Minimis* Exports. In connection with such payment, MATEP LLC shall provide to MASCO and each Current User detailed information that identifies the actual quantity of electricity that was exported across the Current User Facilities of each Current User by MATEP LLC during that month. Upon advance written request and during normal business hours, MATEP LLC shall provide MASCO and each of the Current Users with access to all records and data in the possession or control of MATEP LLC, or to which MATEP LLC has the right of access, which reasonably are required to verify the payment calculation made by MATEP LLC under this subsection. The parties agree that the foregoing fees constitute adequate compensation for the use of such Current User Facilities, including the costs associated with ordinary maintenance and wear and tear.

3. Definition of MATEP Plant. MATEP LLC acknowledges and agrees that the Current User Facilities do not constitute a portion of the "MATEP Plant" as

referenced in the RUCs. For the avoidance of doubt, the parties acknowledge and agree that this provision shall survive the expiration or termination of the RUCs, and that MATEP LLC shall have no right to transmit or export any electric power from the MATEP Plant across the Current User Facilities after the expiration or termination of the RUCs.

4. Tie-Line Capacity and Wheeling. MATEP LLC agrees that the entire capacity of the BECO Tie-Lines is for the benefit of the Current Users, and for the delivery of electricity to the MATEP Plant, as stated in the RUCs. In this regard, MATEP LLC confirms that nothing in this Agreement precludes, overrides, alters or otherwise supersedes the rights of each of the Current Users, or the corresponding rights or obligations of MATEP LLC, under the RUCs with respect to the BECO Tie-Lines or to the wheeling of alternative supplies of electricity to each of the Current Users, all as provided under the RUCs.

5. Payment of Charges. MATEP LLC agrees that it will not pass on as new fees or charges to any of the Current Users any of the monthly demand or other charges contained in Agreement, or otherwise incurred by MATEP LLC in the exercise of its rights under the Agreement, under the provisions of the RUCs or otherwise.

6. Coordination with Respect to Future Actions. MATEP LLC agrees that before it enters into any agreement for transmission or distribution services with respect to the BECO Tie-Lines or the new Colburn Station Tie-Lines, or with respect to the construction of new transmission or other significant electric distribution lines from or to the MATEP Plant, MATEP LLC will both (a) timely notify MASCO and the Current Users of such proposed action, and (b) discuss in good faith with MASCO and the Current Users any concerns that any of them may raise with respect to such proposed action. MASCO and the Current Users acknowledge and agree that such information has commercial and market sensitivity, and shall not disclose (except as set forth herein) any such information to any third party, shall make such information available to their employees, consultants, attorneys or agents on a "need to know" basis, and shall use such information solely for purposes of evaluating the impact of such proposed construction on the service provided under the RUCs.

MATEP LLC, MASCO, and the Current Users each may rely on the undertakings in this letter as if they are a part of and enforceable under the RUCs, with the exception of the acknowledgements and agreements stated in paragraph 2 hereof, which acknowledgements and agreements are enforceable as a separate agreement. For the avoidance of doubt, the parties acknowledge and agree that this letter agreement shall not otherwise alter or modify any right or obligation set forth in any agreement between MATEP LLC, MASCO and/or the Current Users (or any of them). In consideration of this letter agreement, the Current Users (individually and collectively) agree to not to intervene in, protest, or otherwise take any action of an adversarial nature in connection with NSTAR Electric's request approval of the Agreement by the Federal Energy Regulatory Commission (FERC), provided NSTAR Electric is seeking approval of the Agreement in the form filed at the FERC on February 15, 2007.

If the foregoing is in accord with your understanding, I would appreciate it if you would countersign a copy of this letter and return it to me on or before February 22, 2007. I look forward to continue to work cooperatively with MASCO and the Current Users on any issues concerning the operation of the MATRP Plant and the RUCs.

Sincerely,

William J. DiCroce

cc: Timothy N. Cronin, Esq.
Mark C. Kalpin, Esq.

Accepted and Agreed by MASCO, Inc.
(on behalf of itself and each of the Current Users):

Norva H. Kennard, Esq.
General Counsel

Appendix J

Annual Percentage Rebate and Annual FCM Rebate

This Appendix J sets forth certain payment obligations by MATEP in favor of the User and the other Current Users and is fully incorporated into and forms a part of the Amended Utilities Contract ("AUC") to which it is appended. Capitalized terms used in this Appendix J without definition shall have the respective meanings given them in the Amended Utilities Contract to which it is appended. The provisions of this Appendix J shall be provisions of the Amended Utilities Contract to which it is appended. The obligations of MATEP set forth in this Appendix J shall be construed as obligations of MATEP under the Amended Utilities Contract and be subject to all provisions of the Amended Utilities Contract, including the enforcement of rights of the User and MATEP with respect to such obligations. All references to subsections herein shall, unless the context otherwise requires, be references to subsections of this Appendix J.

1. Definitions. As used in this Appendix J the following terms shall have the respective meanings set forth below:

"Amended Other Utilities Contact" means the Amended Other Utilities Contract, dated as of September 30, 2015, between MATEP and The Children's Hospital Corporation, relating to the delivery of utilities to the buildings referred to therein as the Clinical Building, the Karp Building and 57 Binney Street.

"Annual AUC Revenues" means, as to any User, the gross revenues of MATEP generated from such User by billings by MATEP for Utilities under the Amended Utilities Contract, or as applicable under the Amended Other Utilities Contract, during the preceding calendar year determined on an accrual basis (i.e., the Utilities charges shown on MATEP bills for the applicable calendar year, whether or not billed in such calendar year), net of adjustments under the AUC and the Amended Other Utilities Contract for correction of billing errors (but not net of the Annual Percentage Rebate or the FCM Rebate).

"Annual AUC Revenues of all Current Users" means the sum of the Annual AUC Revenues for the User and Annual AUC Revenues for each of the other Currents Users for the calendar year in question.

"Annual FCM Revenues" means the sum of the revenues actually received by MATEP in respect of the twelve months comprising a calendar year arising out of MATEP's participation in the FCM for (x) its Capacity Supply Obligation or (y) any other sales of capacity to any person or entity directly or indirectly involved in FCM during such calendar year, (a) including FCM performance payments and other FCM-related payments available to capacity resources participating in FCM, (b) excluding FCM Exclusions and (c) as adjusted for (i) FCM Revenue Adjustments and (ii) Partial Years as provided in subsection 4(d).

"Capacity Supply Obligation" shall mean required generation commitment of MATEP to ISO-New England or another RTO for a given monthly period as determined in accordance with

ISO-New England (or other RTO) criteria.

"Capacity Supply Obligation Adjustments" means adjustments resulting from the following causes, among others, in each case affecting MATEP's FCM Capacity Supply Obligations: (i) reductions actually incurred due to qualification tests, any form of maintenance, retirements, and delisting or (ii) decreases due to MATEP's use or requirements of bilateral agreements with other capacity suppliers or reconfiguration auctions.

"Change in Control" means (i) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of MATEP, MEH or MEP to any person that is not an Affiliate of any of them; (ii) the complete liquidation or dissolution of MATEP, MEH or MEP; (iii) the direct or indirect acquisition by any person of ownership of 50% or more (on a fully diluted basis) of the then outstanding membership interests shares of MATEP, MEH or MEP; or (iv) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction to which MATEP, MEH or MEP is a party after which the members of MATEP, MEH or MEP, as the case may be, immediately prior to such transaction would own, in the aggregate, less than 50% of the total combined voting power of all membership interests of the surviving entity.

"Debt Service" means scheduled payments of principal and interest of Permitted Debt, and any User-Related DSR Replenishment.

"Debt Service Reserve" means any debt service reserve put in place in relation to Permitted Debt, which represents the maximum Debt Service payable during any twelve-month period over the remaining term of such Permitted Debt; provided, that such Debt Service Reserve must be funded or supported by a letter of credit (in each case in an amount not less than the Debt Service Reserve) at the closing of the initial funding of the Permitted Debt.

"Economic Impacts" shall mean the annual net economic impacts on both MATEP and the User, taking into consideration all direct and indirect costs and all actual net revenues associated with MATEP's eligibility for and participation in the Post-FCM Market.

"FCM" means the wholesale electricity capacity market operated by ISO-New England or any other RTO that assures resource adequacy, locally and system-wide, including any reasonably equivalent program operated by ISO-New England (or another RTO) in modification or substitution of the FCM in effect on the Amendment Effective Date (whether such modification or substitution is designated "FCM" or otherwise).

"FCM Capacity Supply Obligation" means the annual average of MATEP's adjusted monthly Capacity Supply Obligation in kilowatts (but not less than 1 kW) on which the Annual FCM Revenues payment was based, as adjusted (i) for any Capacity Supply Obligation Adjustments as defined in this Section 1 and (ii) Partial Years as provided in subsection 4(d).

"FCM Exclusions" means each of

(a) any amount that MATEP receives for new generating capacity associated with the Gas Turbine prior to the earlier of (A) January 1, 2025 and (B) the date that is 5 years following the commercial operation date of the Gas Turbine; notwithstanding the foregoing, beginning on the earlier of (A) January 1, 2025 and (B) the fifth anniversary of the commercial operation date of the Gas Turbine, the Annual FCM Revenues received by MATEP for the mega-watts associated with the Gas Turbine will be eligible for the FCM Rebate under this Appendix J and MATEP shall include such FCM revenues in the Net FCM Price calculation; and

(b) subject to Sections 4(e) and 4(f), any share of any FCM revenues that MATEP does not actually receive due to changes in law or regulation or any decree or ruling of any court, arbitrator, agency or other government agency or authority, system maintenance, delisting, system implementation, system changes, Force Majeure or any other reason, including (on a non-duplicative basis) the FCM Revenue Adjustments and Capacity Supply Obligation Adjustments.

"FCM Rebate" means (i) the total rebate payable to all Users in the aggregate calculated in accordance with Section 3(c), or (ii) if applicable, the "Revised FCM Rebate" determined pursuant to Section 4(f) hereof.

"FCM Revenue Adjustments" means adjustments to FCM Revenue made to (i) reflect any downward FCM revenue revisions resulting from MATEP's inability to fulfill Capacity Supply Obligations due to maintenance, retirements and unplanned outages, recognizing that such downward FCM revenue revisions may result from penalties, impositions or other financial charges imposed on MATEP by ISO-New England or otherwise pursuant to any FCM program (including negative FCM Capacity Performance Payments), and (ii) deduct from Annual FCM Revenues any payments MATEP was required to make to non-Affiliates to cover its Capacity Supply Obligations, using arrangements such as bilateral agreements or reconfiguration auctions. FCM Revenue Adjustments are as set forth herein and shall not include any ISO-New England Load Expenses charged to the Plant or MATEP.

"ISO-New England" means ISO-New England, Inc. or any successor thereto as the independent, not-for-profit corporation established by the federal government in 1997 to operate the high-voltage power system in the six New England states, administer the region's wholesale electricity markets and conduct its power system planning.

"ISO-New England Load Expenses" means ISO-New England (or, if and to the extent applicable, other RTO) fees, charges, impositions and expenses, however designated or denominated, charged to load-serving entities from time to time.

"MATEP Equity Holders" means any holder, directly or indirectly, of any ownership interest in MATEP, MATEP Limited Partnership, MEH or MEP.

"MEH" means MATEP Energy Holdings, LLC, a Delaware limited liability company.

"MEP" means Mayflower Energy Partners, LLC, a Delaware limited liability company.

"*N*" means, (i) in the case of each calendar year during which the Amended Utilities Contract has been in effect for the entire year, twelve (12); and (ii) in the case of any Partial Year, the number of months (rounded to the nearest whole month) of such Partial Year during which the Amended Utilities Contract had been in effect.

"Net FCM Price" means Annual FCM Revenues divided by the FCM Capacity Supply Obligation, divided by *N*.

"Partial Year" means a calendar year during which the Amended Utilities Contract is not in effect for the entire year.

"Percentage Rebate" means the amount equal to 1.75% (1 percent plus 3/4 of 1 percent) of the User's Annual AUC Revenues.

"Post-FCM Market" means a new wholesale electricity capacity market developed and operated by ISO-New England or any other RTO to assure resource adequacy to replace the FCM and which is not reasonably equivalent to the FCM.

"Proportionate Share" shall mean for each User, its proportionate share of the FCM Rebate, which shall be equal to each User's Annual AUC Revenues as a percentage of all Current Users' Annual AUC Revenues for any given year.

"Rebates" shall mean both the Percentage Rebate and the FCM Rebate.

"RTO" shall mean any regional transmission organization or independent system operator subject to regulations promulgated by the Federal Energy Regulatory Commission.

"User's Annual AUC Revenues" means, as to the User, its Annual AUC Revenues.

"User-Related DSR Replenishment" means a replenishment of the Debt Service Reserve where the need for such replenishment is caused by the action of, or failure to act by, the User or one or more of the other Current Users; provided, that if (a) the holder of Permitted Debt takes possession of substantially all of the Plant Assets or (b) otherwise takes, directly or indirectly, operational control of the Plant (without becoming a formal successor to MATEP under the Amended Utilities Contract), then for so long as (a) or (b) continue in effect, replenishment of the Debt Service Reserve shall constitute a User-Related DSR Replenishment.

2. Annual Percentage Rebate.

a) Effective as of the Amendment Effective Date, MATEP will pay the User the Percentage Rebate for each full or partial year of the Initial Term, such payment to be made in arrears not later than April 1 of the immediately succeeding year. At the same time that MATEP shall pay the Percentage Rebate to the User, MATEP will provide a statement showing the

calculation of both the User's Annual AUC Revenues (which shall be consistent with MATEP's billing for Utilities for such calendar year) and the application of the Percentage Rebate.

3. FCM Rebate.

a) Effective as of the Amendment Effective Date, and subject to the terms and conditions set out herein, MATEP will pay the User its Proportionate Share of the FCM Rebate for each full or partial year of the Initial Term beginning with 2015, such payment to be made in arrears not later than April 1 of the immediately succeeding year. The FCM Rebate shall be equal to a portion (based on the Sharing Band percentages set forth in subsection 3(c)(ii) and subsection 3(c)(iii) below) of MATEP's Annual FCM Revenues depending on the Net FCM Price that MATEP receives each year for its FCM Capacity Supply Obligation, as calculated pursuant to subsection 1 above and subsection 3(d) below. After the above calculations, the FCM Rebate will be apportioned and paid to the User and the other Current Users based on each User's respective Proportionate Share of the Annual AUC Revenues of all Current Users.

b) At the same time that MATEP shall pay the FCM Rebate to the User, MATEP will provide a statement showing the calculation of MATEP's Annual FCM Revenues, FCM Revenue Adjustments, FCM Exclusions, the Net FCM Price, and the User's Proportionate Share, all in sufficient detail to confirm the calculation of the FCM Rebate.

c) The FCM Rebate will be calculated as follows as a percentage of Annual FCM Revenues received with respect to MATEP's FCM Capacity Supply Obligation:

(i) If the Net FCM Price for any calendar year is less than or equal to $6.00/kW/month, the FCM Rebate shall equal zero and no FCM Rebate will be due to the User;

(ii) If the Net FCM Price for any calendar year is greater than $6.00/kW/month and less than or equal to $8.00/kW/month (a "Tier I Sharing Band"), the FCM Rebate shall be equal to ten (10%) percent of the amount by which the Net FCM Price exceeds $6.00/kW/month multiplied by the FCM Capacity Supply Obligation for that year multiplied by N; the maximum from the Tier I Sharing Band would be $0.20/kW/month; and

(iii) If the Net FCM Price for any calendar year is greater than $8.00/kW/month (a "Tier II Sharing Band"): the FCM Rebate shall equal the sum of (x) the maximum from the Tier I Sharing Band ($0.20/kW/month) plus (y) 20% of the amount by which the Net FCM Price exceeds $8.00/kW/month, multiplied by the FCM Capacity Supply Obligation for that year, multiplied by N.

d) The following is an example of the calculation of the FCM Rebate:

(i) Assume that the Annual FCM Revenues received during the 12-

month year are $7,980,000 and MATEP's FCM Capacity Supply Obligation for the year is 70MWs (70,000kW).

(ii) Dividing the Annual FCM Revenues by the FCM Capacity Supply Obligation, and divided again by 12 months in the year, results in a Net FCM Price of $9.50 / kW / month ($7,980,000 / 70,000 / 12);

(iii) Tier I Sharing Band: [($8.00 - $6.00) * 10%] * 70,000 * 12 months = $168,000;

(iv) Tier II Sharing Band: [($9.50 - $8.00) * 20%] * 70,000 * 12 months = $252,000; and

(v) FCM Rebate from (a) Tier I Sharing Band plus (b) Tier II Sharing Band = $420,000 in aggregate for all Users

(vi) Assuming that a particular User's Proportionate Share for the given year was 22%, its share of the FCM Rebate would be $92,400.

4. General Provisions Applicable to the Rebates

a) Subordination. Notwithstanding any other provision of this Appendix J or the Amended Utilities Contract to the contrary (other than provisos (A), (B), (C) and (D) at the end of this subsection 4(a)), the obligation of MATEP to pay the Rebates to the User shall be subordinate and shall rank junior only to obligations of MATEP to pay the following obligations:

(i) taxes imposed on the Plant and the operations of the Plant Assets (such as ad valorem, property, sales and franchise taxes) but excluding any taxes on MATEP's income or the income of any MATEP Equity Holders;

(ii) ordinary operating and maintenance expenses (including capital expenditures up to a cap of $6 million per calendar year, on a non-cumulative basis); and

(iii) Debt Service.

provided, that

(A) any amounts of Rebates that have become due and payable and would have been paid but for the subordination set forth in this subsection 4(a), shall be accelerated and shall be due and payable immediately prior to any distributions to the members of MATEP or to any MATEP Equity Holders upon or following the sale of the Plant or the Plant Assets, the liquidation of MATEP or any MATEP Equity Holders or upon any Change in Control

of MATEP or any MATEP Equity Holders;

(B) the obligation to pay the Rebates shall be senior to and must be current prior to any distributions to equity holders out of MEP or to any other MATEP Equity Holders and any arrearages or accruals of the Rebates must be paid in full prior to any equity distributions to the equity holders of MEP or to any other MATEP Equity Holders;

(C) in no event shall any prior payments of either or both of the Rebates be subject to repayment by the User or claw back from the User as a result of the subordination provided by this subsection (a); and

(D) if after the application of subsection 4(a)(i) through (iii) sufficient funds remain to permit MATEP to pay less than the full amount of the Rebates, MATEP shall pay the maximum amount remaining after such application and allocate the payment first to the Percentage Rebate (until paid in full) and then to the FCM Rebate.

b) Default. If (i) there occurs any Event of Default by the User under subsection 10(a)(iii) of the Amended Utilities Contract, and (ii) the User is no longer purchasing Utilities from MATEP as of April 1 of any year of the Initial Term, MATEP shall not be obligated to pay either of the Rebates to the User, and the User shall have forfeited all rights to receive the Rebates under this Amended Utilities Contract for the calendar year in which the Event of Default has occurred and (unless and until the User has cured all defaults and reinstated the Amended Utilities Contract) for all years thereafter. The termination of the obligation to pay the Rebates as set forth in this Section 4(b) shall be in addition to the rights of MATEP under subsection 10(a)(iv) of the Amended Utilities Contract.

c) Waiver. The User hereby waives any right it may have to enforce its right to payment of the Rebates by the levy, imposition or assertion of any lien, security interest or other encumbrance on the Plant Assets. The exercise of any Buy-Out Rights or Step-In Rights by the User pursuant to the Amended Utilities Contract shall not alter the provisions of subsection 4(a) as to the Rebates under this Appendix J. Nothing in this Appendix J shall serve to modify any User Buy-Out Rights or Step-In Rights under the Amended Utilities Contract.

d) Partial Years. The Rebates shall be adjusted to account for any Partial contract Years as set forth in this subsection 4(d). In the case of 2015, User's Annual Amended Utilities Contract Revenues shall refer only to the revenues for such User in dollars billed by MATEP for Utilities under this Amended Utilities Contract determined on an accrual basis net of corrections for billing errors for Utilities delivered during 2015 after the Amendment Effective Date. In the case of the termination of the Amended Utilities Contract on a date other than December 31, the User's Annual AUC Revenues shall mean the revenues for such User as determined on an accrual basis net of corrections for billing errors for Utilities delivered during the Partial Year. With respect to the FCM Rebate, in the case of any Partial Year, (i) "Annual FCM Revenues" shall mean the sum of the revenues actually received by MATEP for those actual months representing *N* arising out of MATEP's participation in the FCM for its Capacity Supply

Obligation during those actual months representing *N*, as adjusted for FCM Revenue Adjustments; and (ii) "FCM Capacity Supply Obligation" shall mean the average of those months representing *N* of the FCM Capacity Supply Obligation in kilowatts on which the Annual FCM Revenues was based, as adjusted pro rata for any Capacity Supply Obligation Adjustments. These Partial Year payments are to be paid out in accordance with the normal payment dates specified in subsections 2(a) and 3(a) above.

e) No FCM Participation Requirement. Nothing in this Appendix J or otherwise in the Amended Utilities Contact shall be construed to require MATEP's participation in the FCM or in any Post-FCM Market; provided, that neither the User nor MATEP shall structure its business arrangements in a manner that materially frustrates or distorts the availability of the FCM Rebate to the User, for example, by delaying (or accelerating) the receipt of Annual FCM Revenues or by leasing the Plant to an O&M operator so that such O&M operator is the load-serving entity which participates in FCM and the Plant owner only receives "rent" which directly or indirectly reflects a portion of FCM revenues.

f) Nonrepresentativeness. Without derogating from the provisions of Section 4(e) of this Appendix J, the following shall apply:

(i) MATEP and the User acknowledge that FCM programs are designed to incent resource adequacy, locally and system-wide, through, inter alia, remuneration for capacity to meet planning reserve margin targets (and with associated incentives to perform during shortages). This is in contrast to an "energy only market" ("EOM") designed to incent resource adequacy only through pricing "signals" for energy and ancillary services delivered, without imposing reserve margin requirements and without providing remuneration for supplying capacity to meet such requirements.

(ii) If FCM is replaced with a Post-FCM Market that results in the FCM Rebate under this Appendix J no longer operating so as to achieve the original intent of the Parties with respect to the economic sharing of Annual FCM Revenues realized by MATEP, MATEP and the User shall consult immediately in good faith in an attempt to mutually agree on a replacement FCM Rebate formulation that preserves the Economic Impacts on the User and MATEP in a manner that is reasonably comparable to those achieved by the FCM Rebate set forth in this Appendix J (the "Revised FCM Rebate"); provided, that MATEP and the User acknowledge that a Revised FCM Rebate shall not be required should an EOM develop in lieu of a FCM.

(iii) If MATEP and the User are unable to reach agreement on a Revised FCM Rebate through consultations within a period of 45 days following the commencement thereof (such 45th day, the

"First Deadline"), then MATEP and the User shall proceed to mediation pursuant to Section 15.

(iv) If mediation pursuant to Section 15 does not result in agreement on a Revised FCM Rebate formulation within 120 days from the First Deadline, then each party shall within ten (10) business days thereafter select a leading expert in electricity markets knowledgeable about the purchase and sale of electricity and related market functions in the ISO-New England territory (and in the territory of any other RTO in which MATEP participates) that is not an Affiliate of the choosing party (each a "Market Expert") and shall notify the other party of the name of such Market Expert; provided, that the User may use the same Market Expert as other Current Users so long as the other requirements of this subsection 4(f)(iii) are satisfied. Within ten (10) business days the Market Experts selected by each party shall select a third Market Expert. Unless agreed to by each party, the third Market Expert shall not have been employed, either directly, or as an independent consultant, by a party of any of its Affiliates at any time during the last three (3) years. All Market Experts shall perform their duties with diligence and good faith. In the event that a party fails to appoint a Market Expert, the Market Expert appointed by the other party shall choose a second Market Expert, and the two Market Experts so chosen shall choose a third. In the case of the death or refusal or inability to act of any Market Expert, such Market Expert's successor will be appointed in the same manner as is provided for such Market Expert's appointment in the first instance, unless the parties otherwise agree. All Market Experts, based on information submitted by the parties and other relevant information, will determine, by majority decision rendered within twenty (20) business days of the submission of such information a Revised FCM Rebate formulation which accurately preserves the Economic Impacts on the Parties in a manner that is reasonably equivalent to those achieved by the User and MATEP from the FCM Rebate under Section 3(c). The User and MATEP shall equally share the costs and expenses incurred by the Market Experts in connection with this subsection.

(v) The Revised FCM Rebate shall be applied retroactively to any period when the FCM Rebate was not payable for reasons which triggered the applicability of this Section 4(f).

LIMITED JOINDER

The undersigned Longwood Medical Energy Collaborative, Inc. hereby joins in this Amended Utilities Contract for the limited purpose of confirming Section 24.

Executed as a sealed Massachusetts instrument.

LONGWOOD MEDICAL ENERGY COLLABORATIVE, INC.

By: _____
Name: John J. Aubrecht
Title: President & Executive Director

Dated: September 30, 2015

LIMITED JOINDER

The undersigned MATEP Limited Partnership hereby joins in this Amended Utilities Contract for the limited purpose of confirming Sections 10(d) and 13(d) and Appendix G.

Executed as a sealed Massachusetts instrument.

MATEP LIMITED PARTNERSHIP, a
Massachusetts limited partnership

By: MATEP GP, LLC, a Delaware limited
liability company, its general partner

By: _____
Name: Richard Kessel
Title: President and Chief Executive Officer

Dated as of September 30, 2015

EXHIBIT 2

13 Mass.L.Rptr. 595
Superior Court of Massachusetts.

BETH ISRAEL DEACONESS
MEDICAL CENTER, INC.,
v.
MATEP, LLC et al. [1]

No. 994530BLS.
|
March 20, 2001.

MEMORANDUM AND ORDER ON PARTIES' MOTIONS FOR SUMMARY JUDGMENT AFTER EVIDENTIARY HEARING ON THE INTENT AND MEANING OF CONTRACT LANGUAGE

van GESTEL, J.

***1** These matters [2] are again before the Court, this time on a second phase of the motions of the parties for summary judgment. The parties disagree over the interpretation of language in a June 1, 1998, letter agreement ("Letter Agreement"). Earlier, all parties argued that the contract language in question was unambiguous and, therefore, that they each were entitled to judgment as a matter of law. Although the language of the Letter Agreement was simple, because its interpretation by the Court seemed to present genuine issues of material fact regarding the parties' intent, all motions were denied. See Memorandum and Order on Parties' Cross Motions for Summary Judgment, dated December 21, 2000, full familiarity with which is assumed. Sensing the significance of the interpretation of the contractual language to the ultimate resolution of these cases, the Court scheduled a limited bifurcated evidentiary hearing in aid of that purpose.

BACKGROUND

The background materials that follow are taken from the parties' previous filings in support of and opposition to the several motions for summary judgment, and from the testimony, exhibits, briefs and arguments presented at and after the evidentiary hearing conducted between February 20 and February 23, 2001.

MATEP LLC and Medical Area Total Energy Plant, Inc. (collectively, "**MATEP**") are the owners and operators of the Medical Area Total Energy Plant, an energy-generating plant and distribution system that provides electricity, steam and chilled water to, among others, the five plaintiffs in these cases: Beth Israel Deaconess Medical Center, Inc.; The Brigham and Women's Hospital, Inc.; The Children's Hospital Corporation; Dana-Farber Cancer Institute, Inc.; and Joslin Diabetes Center, Inc. (collectively, the "plaintiffs" or "users"). The plaintiffs are hospitals and educational institutions in Boston's Longwood Medical Area.

MATEP was originally constructed and owned by Harvard University ("Harvard"). By the summer of 1997, Harvard was preparing to sell **MATEP**. As a result, Harvard and the plaintiffs negotiated, and on October 31, 1997, executed, what was called the Third Amendment to the Restated Utilities Contracts ("RUCs"). The purpose of the Third Amendment was, among other things, to address the impact of the then-impending deregulation of the Massachusetts electricity market on the prices to be charged by **MATEP** to the users for electricity under their contracts.

For many years prior to May 1998, **MATEP** had sold electricity to the users at rates corresponding to those charged by the Boston Edison Company ("Edison"). The Third Amendment made certain changes in the way that the users paid for electricity. Under it, the price for electricity would change from the Boston Edison G-3 rate to the price of alternative suppliers of electricity upon the satisfaction of the following four conditions:

(1) that a competitive market for energy exists;

(2) that alternative supplies of electricity at comparable levels of service to that provided by **MATEP** and with specifications and reliability standards at least equal to those provided for in the contracts with **MATEP** are actually available;

***2** (3) that, in the absence of the contracts with **MATEP**, the users could contract for and obtain delivery of such alternative supplies of electricity under firm, non-interruptible agreements; and

(4) that delivery of such alternative supplies of electricity is not prohibited by law.

While the Third Amendment was being negotiated between Harvard and the plaintiffs, Advanced Energy Systems, Inc. ("AES") was selected by Harvard as the likely purchaser of

MATEP. The plaintiffs in these cases, as users of the **MATEP** system, had certain approval rights regarding any sale by Harvard of the facility.

At the time leading up to the closing of the sale from Harvard to AES, it became known that PECO Energy Company ("PECO"), [3] which had not previously provided electricity in Massachusetts, had entered or was about to enter the market. In the spring of 1998, the plaintiffs here, as users of **MATEP** electricity, requested that AES, as the future owner, agree to match the price and other terms offered by PECO to members participating in the Power Options Program. [4]

Under the Power Options Program, participants would remain customers of their local utility company from the date they entered into agreements with PECO until PECO converted their electricity accounts to service from it. This conversion would not occur until some time after the favorable resolution of a referendum on electric deregulation on the Massachusetts ballot in November 1998.

The plaintiffs' request that AES agree to match the PECO price resulted in four meetings that occurred on March 31, April 9 and 16, and May 13, 1998, among the users and their counsel, Harvard, and AES. Initially, AES had concerns about whether the PECO proposal met the comparability conditions of the Third Amendment to the RUCs. In essence, AES was concerned about whether the PECO proposal was a "real deal," meaning: was PECO actually going to provide electricity, or was it just a financial scheme? And, if PECO was truly going to supply electricity, would it be supplied in a manner comparable to that supplied to its users by **MATEP**? These, and other issues, were unsuccessfully negotiated at the first three of the meetings, with agreement only arriving at and after the fourth. The impending closing of the Harvard/AES transfer of **MATEP** played some role in the parties' resolution of the PECO pricing issue.

The issue of comparability was in part ameliorated when it was learned that Massachusetts General Hospital, New England Medical Center and St. Elizabeth's Hospital were each signing up with PECO. To the extent comparability remained in play, it was swallowed up in the "real deal" versus "financial deal" debate.

At the first three meetings among the users, Harvard and AES, the discussion focused on how to sort out real offers of electricity from solely financial arrangements. All parties wanted to agree on a simple test, but they differed on what that test would be. AES advanced a majoritarian approach, insisting that PECO must "deliver" electricity to a majority of all of HEFA's participating institutions. The users, on the other hand, argued for a test involving only a reference group of similar medical institutions. This impasse continued through the March and April meetings.

***3** At the May 13, 1998, meeting, AES broke the log-jam when it presented a draft Letter Agreement that, with minor changes, became the ultimate Letter Agreement of June 1, 1998. AES essentially accepted the users' approach. The essence of the Letter Agreement entered into between AES and the plaintiffs is that if electricity from PECO became actually available to certain designated hospitals listed in Exhibit B thereto that had signed on to receive electricity under agreements with PECO, **MATEP** would charge its users the lower PECO rate for the period from June 1, 1998, through February 28, 2001. The Letter Agreement provides that it shall terminate in favor of **MATEP** "in the event that by April 1, 1999 ... PECO has not *commenced* deliveries of electricity *under a majority* of the Two Year Agreements." (Emphasis added.)

The parties also agreed that until April 1, 1999, the plaintiffs would pay **MATEP** the higher Boston Edison rate for electricity, but that any excess over the PECO rate would be held in an escrow account controlled by **MATEP**. The escrowed funds would be returned to plaintiffs if PECO commenced deliveries of electricity by April 1, 1999.

Claiming that the condition of the Letter Agreement has been met-i.e., PECO commenced delivery as required by April 1, 1999-plaintiffs seek the return of the escrowed funds, which now total more than five million dollars. AES disagrees.

PECO signed certain Two Year Agreements ("Two Year Agreements") to provide electricity to the "seven" [5] designated Massachusetts health institutions at rates that were lower than Edison's. The Two Year Agreements with the designated hospitals provided that

> PECO Energy agrees to supply ... electric energy and capacity sufficient to provide firm, full requirements of Electricity for each Account, meaning supply of Participant's total electricity at each Receipt Point supplied from external sources.
> The designated hospitals all had numerous electric meters at a variety of different locations. By April 1, 1999, it

appears that PECO had begun "delivering" electricity to some of the meters of at least five of the designated hospitals. The current dispute centers on whether this "delivery" of electricity to some of the meters at a majority of the designated hospitals satisfies the contractual requirement of "actually available."

DISCUSSION

Summary judgment is granted where there are no issues of genuine material fact and the moving party is entitled to judgment as a matter of law. *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991); *Cassesso v. Commissioner of Correction*, 390 Mass. 419, 422 (1983); Mass.R.Civ.P. 56(c). The moving party bears the burden of affirmatively demonstrating that there is no triable issue of fact. *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989).

The Letter Agreement provides the test for whether electricity would be "actually available" to be if PECO "commenced deliveries under a majority of the Two Year Agreements" by April 1, 1999. Although the parties all agree that "commence" means "begin," they dispute the definition of "under a majority of the Two Year Agreements." Plaintiffs contend that "commenced deliveries under a majority of the Two Year Agreements" means "begin delivery of electricity to a majority of the seven hospitals." Consequently, because PECO had executed agreements to provide electricity to at least five of the designated hospitals by April 1, 1999, plaintiffs contend that under the plain language of the Letter Agreement, the test of "actually available" electricity has been passed.

***4** **MATEP** responds that because the Letter Agreement specifically referenced the "Two Year Agreements," and a sample Two Year Agreement was attached to each Letter Agreement, "actually available" must be considered in the context of both the Letter Agreement and the Two Year Agreement. **MATEP** thus argues that each of the designated hospitals that entered into a Two Year Agreement with PECO has several different electric meters in several different locations, and each Two Year Agreement listed every meter or account to which electricity was delivered to that particular hospital. Consequently, **MATEP** contends that to satisfy the requirement of "actually available" electricity, PECO would have had to have begun delivery of electricity to every meter of a majority of the designated hospitals by April 1, 1999. Unless service had commenced to every meter at a majority of the designated hospitals, **MATEP** maintains, the "firm, full requirements of Electricity for each Account" condition of the Two Year Agreements would not have been satisfied. In support of this interpretation, **MATEP** notes that the Two Year Agreements define "firm, full requirements" as "supply of Participant's total electricity at each Receipt Point supplied from external sources." Thus, **MATEP** argues that the electricity was not "actually available" unless PECO had begun to deliver electricity to every meter (receipt point) at a majority of the designated hospitals by the target date.

These different interpretations of "under a majority of the Two-Year Agreements" revealed to the Court a genuine issue as to the parties' intent at the time they entered into the Letter Agreement. "The intention of the parties, if made ambiguous by the words of the contract, generally presents a question of fact." See *Levenson v. L.M.I. Realty Corp.*, 31 Mass.App.Ct. 127, 130 (1991). Plaintiffs interpret "under a majority of the Two Year Agreements" as "to a majority of the seven hospitals," while **MATEP** defines the same language as "to every meter at a majority of the seven hospitals." Because the phrase "under a majority of the Two Year Agreements" might reasonably support either interpretation, this Court, in considering the original motions for summary judgment, found the wording to be ambiguous, and the ambiguity could not be resolved as a matter of law. It was this finding that resulted in the evidentiary hearing.

The resolution of the several motions here depends upon a proper interpretation of the language of the Letter Agreement. This is a question of law for the Court. *Lumber Mut. Ins. Co. v. Zoltek Corp.*, 419 Mass. 704, 707 (1995). "In the absence of an ambiguity, [a Court] will 'construe the words of the [contract] in their usual and ordinary sense.' " *116 Commonwealth Condominium Trust v. Aetna Casualty & Surety Company*, 433 Mass. 373, 376 (2001). The mere fact that parties disagree on the proper construction of contractual language does not necessarily establish an ambiguity. *Lumbermans Mut. Cas. Comp. v. Offices Unlimited, Inc.*, 419 Mass. 462, 466 (1995).

***5** A contract is to be read in light of the circumstances of its execution, which may enable a Court to see that its words may be understood or, in the alternative, are actually ambiguous. *Robert Industries, Inc. v. Spence*, 362 Mass. 751, 753 (1973). When an element of ambiguity appears in a contract, the Court considers the entire instrument and the general scheme it reveals to determine the significance

and meaning of the ambiguous terms. *MacDonald v. Gough,* 326 Mass. 93, 96 (1950). "The object of the court is to construe the contract as a whole, in a reasonable and practical way, consistent with its language, background and purpose." *USM Corp. v. Arthur D. Little Systems, Inc.,* 28 Mass.App.Ct. 108, 116 (1989). The Court must act in a way to give effect to the agreement as a rational business instrument in order to carry out the intent of the parties. *Starr v. Fordham,* 420 Mass. 178, 192 (1990). Judges have no roving writ to construe contractual language in a way that they think best. *Exxon Corp. v. Esso Workers' Union Inc.,* 118 F .3d 841 (1st Cir.1987). Justice, common sense and the probable intention of the parties upon consideration of the words in question are guides to construction of a written instrument. *City of Haverhill v. George Brox, Inc.,* 47 Mass.App.Ct. 717, 720 (1999).

There is no question that PECO's Two Year Agreements with the designated hospitals require it to supply them with "electric energy and capacity sufficient to ... provide firm, full requirements of Electricity for each Account, meaning supply of Participant's total electricity at each Receipt Point supplied from external sources." The Court, initially, had trouble with the meaning of that language. At a minimum, a determination might depend upon numerous evidentiary factors, including the intent and practice of the parties and industry custom.

The evidentiary hearing, following the summary judgment arguments and filings, however, has provided the Court with information that enables it to resolve the parties' disagreements. This comes not from a study of the PECO Two Year Agreements, however, but rather from a newfound appreciation of what was said, and not said, about the meaning of the word "deliveries" as it relates to electricity as used in the Letter Agreement.

The test to determine "actual availability" agreed to by AES and the users in the Letter Agreement had as its purpose to create a simple way of determining whether PECO's participation in the Power Options Program with HEFA's members was a "real deal" or just a "financial deal."[6] The selected language-"commenced deliveries of electricity"-was authored by AES and was included in its draft of the Letter Agreement first presented by its counsel at the May 13, 1998, meeting. The language used, however, was never changed and was not discussed; everyone present was quite content that they understood exactly what it meant. No one testified to attributing any special industry custom or meaning to the words. In fact, however, everyone employed a word that did not comfortably fit the situation.

***6** It has become clear to this Court from the evidentiary hearing that the word "deliveries" was miscast. What all of the parties really intended was a word or words that would better reflect what actually happens in the real world of electric power generation and from what source and in what manner the watts actually arrive at the user.

Only one witness presented testimony and evidence about the way that electricity is made available to users. This witness was Douglas Stevenson ("Stevenson"), owner of Energy Options Consulting Group, LLC, a man with extensive credentials and experience in the electric power industry, and whom the Court found to be wholly credible.

Stevenson used the analogy of a lake[7] to explain the provision of electricity. He described how a power company like PECO "pours" electricity into a large common "lake"-in the power industry, the lake is called the grid-and "delivers" electricity when its customers (to whom it is contractually obligated and for whom it is financially responsible) draw electricity out of the "lake," or grid. Within one hour of electricity being drawn by a PECO customer from the grid, PECO must "replenish" the amount drawn by its customer either by "pouring" in more of its own electricity or by purchasing electricity from others to be "poured" in. In assessing this process, one can readily see why the word "deliveries" is not the best choice for describing this function.

In the electric industry, customers become "enrolled" by electricity producers. When a new producer, like PECO here, comes into an area already served by a local power supplier, the enrollment process can take about a month to complete. This is because of the connection between enrollment and the reading of electric meters. Only approximately 5% of all meters are read on any given business day. There being about twenty business days in a month, it takes about a month for a complete changeover from one supplier, like Boston Edison and Massachusetts Electric here, to another, like PECO here.

Once a customer has been enrolled by a new power supplier, the fact of that enrollment is expressed on the next bill from the old supplier. Here, for example, the Boston Edison bill to Beth Israel Health Care in Chelsea, dated March 19, 1999, recited: "YOUR NEXT BILL WILL REFLECT SUPPLIER SERVICES FROM EXELON

ENERGY." Similarly, the Massachusetts Electric bill to Nashoba Community Hospital, dated March 26, 1999, bore the notation: "OUR RECORDS INDICATE THAT YOU HAVE SWITCHED YOUR SUPPLIER OPTION TO HORIZON ENERGY, DBA EXELON ENERGY." Each of the foregoing examples were bills for electricity "delivered" by the old suppliers prior to the end of March 1999. The next bills reflect electricity "delivered" by PECO "commencing" before April 1, 1999.

Stevenson provided evidence that starting in the first two weeks of March 1999, PECO began enrolling the eligible accounts for the designated reference hospitals, and that before April 1, 1999, five of those hospitals had 100% of their eligible accounts enrolled with PECO. Once an account was enrolled with PECO, starting with the next meter reading, PECO became responsible for "delivering" electricity to that account by "pouring" electricity into the grid and for "settling up" for that account's withdrawals from the grid.

***7** Stevenson provided evidence that six of the designated hospitals began "receiving" electricity from PECO before April 1, 1999, and that, by April 15, 1999, at the end of the monthly meter cycle, all accounts at five of the designated hospitals were "receiving" from PECO. During the first month alone, PECO was credited with delivering 400 million watt hours of electricity to the designated hospitals, and during the first year an estimated 29 billion watt hours. This was conceded by the President and Chief Operating Officer of AES to be the delivery by PECO of a "substantial amount" of electricity to the designated hospitals.

PECO's participation in the Power Options Program with the designated hospitals was clearly shown to be a "real deal." By April 1, 1999, PECO had commenced "deliveries" of electricity to six of the designated hospitals and had enrolled 90% of the eligible accounts at all of the designated hospitals. Thus, this Court rules that a proper understanding of the method by which electricity is "delivered" through the grid in Massachusetts mandates a conclusion that electricity from PECO became "actually available" to a majority of the designated hospitals by the beginning of "deliveries" under a majority of the PECO Two Year Agreements by April 1, 1999.

What was in issue here were not the details of PECO's Two Year Agreements, but rather whether PECO actually provided electricity or instead was only involved in exchanging money. The language the parties chose-"commenced the deliveries of electricity under a majority of the Two Year Agreements"-had no other limiting words. The Letter Agreement itself defined references to "a majority of the Two Year Agreements" to mean "a majority of those Two Year Agreements set forth on Exhibit B." Exhibit B merely listed the names of "seven" hospitals. Thus the "deliveries of electricity" were to designated hospitals, not to certain unidentified or undefined accounts or meters at those hospitals. "Accounts" and "meters" were never a topic of any discussion among the parties, but comparable hospitals always were. This Court cannot, nor should it, add language to the Letter Agreement relating to "meters" or "accounts" that the parties themselves chose not to include. *H.W. Golden & Sons v. Marblehead,* 68 F.2d 875 (1st Cir.1934).

ORDER

This Court finds, on the narrow issue of the parties' intent as to whether electricity from PECO was "actually available" as contemplated in the test included in the several Letter Agreements of June 1, 1998, between the plaintiffs and **MATEP**, that a proper interpretation of those Letter Agreements mandates a conclusion that electricity from PECO would become "actually available"-as the evidence shows it did-on or before April 1, 1999, by PECO's enrollments and beginning of "deliveries" pursuant thereto of electricity to a majority of the hospitals designated on Exhibit B. As a consequence, the plaintiffs are entitled to recover their respective pro-rata shares from the escrow account.

***8** The plaintiffs' several motions for partial summary judgment are *ALLOWED* insofar as they relate to all issues of liability as set out in their several complaints and as to Count I of the defendants' counterclaims.

To the extent that the defendants press cross motions for summary judgment they are *DENIED.*

All Citations

Not Reported in N.E.2d, 13 Mass.L.Rptr. 595, 2001 WL 1249796

Footnotes

1 Medical Area Total Energy Plant, Inc.

2 Four other actions against the same defendants have been consolidated for essentially identical summary judgment motions: *The Brigham and Women's Hospital, Inc. v. **MATEP** LLC, et al.* (Civil Action No. 99-4531 BLS); *The Children's Hospital Corporation v. **MATEP** LLC, et al.* (Civil Action No. 99-4532 BLS); *Dana Farber Cancer Institute, Inc. v. **MATEP** LLC, et al.* (Civil Action No. 99-4533 BLS); and *Joslin Diabetes Center, Inc. v. **MATEP** LLC, et al.* (Civil Action No. 99-4534 BLS). Each of the plaintiffs executed an identical Letter Agreement.

3 PECO does business in Massachusetts through a subsidiary, Horizon Energy, d/b/a Exelon Energy. This memorandum uses "PECO" to refer to all of its entities doing business in Massachusetts.

4 The Power Options Program was created by the Massachusetts Health and Education Facilities Authority ("HEFA"), and the program had as its purpose securing electricity supplies for its member institutions following deregulation of the electric industry.

5 The "seven" hospitals were: Beth Israel Deaconess Medical Center; Beverly Hospital; Community Hospitals of Eastern Middlesex; Deaconess Nashoba Hospital; Deaconess Glover Hospital; Deaconess Waltham Hospital; Massachusetts Eye and Ear Infirmary; and New England Medical Center. The reason that eight, rather than seven, hospitals are listed in this footnote, is that there was an error in the list attached as Exhibit B to the Letter Agreement. Deaconess Glover Hospital and Deaconess Waltham Hospital, although wholly separate institutions, were listed as one: "Deaconess Glover Waltham Hospital." Nothing turns on this error.

6 Implicit, of course, in agreeing to the test of "deliveries" to the designated hospitals is acceptance of the comparability issues, leaving only the "real deal" versus "financial deal" issue for resolution.

7 A reservoir might have been even more apt.

EXHIBIT 3

MATEP

Delivered by email

August 31, 2021

Gretchen May
President & Executive Director
Longwood Medical Energy Collaborative
164 Longwood Avenue
Boston, MA 02215

RE: Comparability of Electricity Reference Price

Dear Gretchen,

As you will recall, in the spirit of collaboration MATEP raised concerns over the issue of comparability for discussion during the drafting of a memorandum of understanding (MOU) to determine the parameters under which the LMEC and User institutions would participate in a solicitation for electricity supply proposals for Calendar Year 2022 Electricity Supply Pricing. During a series of teleconferences and exchanges of emails in April and May of this year, MATEP expressed the concern that while the solicitation to determine price for a now privately owned building (4 Blackfan) that does not receive electric service from MATEP may produce results that represent some semblance of competitive market prices, those prices would not and could not adequately reflect the "comparable level of service" standard required by the Amended Utility Contract (AUC).

To correct for that inadequacy in design, MATEP suggested to LMEC that it include in its solicitation for supply, a request for pricing proposals that would provide a level of firm, reliable service comparable to the level of service provided by MATEP consistent with the AUC. LMEC, and through it the User institutions, elected not to solicit proposals inclusive of and/or on a stand-alone basis, for a comparable level of service to that provided by MATEP, and further chose not to include those provisions in the draft MOU between LMEC and MATEP. MATEP was disappointed with LMEC's course of action and despite MATEP's efforts to move forward on a cooperative and collaborative basis, was further disappointed in LMEC's subsequent decision to unilaterally cite the results of the 4 Blackfan solicitation process as an index for the electricity reference price for not only calendar year 2022, but also calendar year 2023 pricing.

As we have discussed, MATEP continues to view the 4 Blackfan RFP process as insufficient to establish MATEP's price for electricity consistent with the core principle of comparability under the AUCs. In an effort to better inform our discussions in arriving at an electricity price that more accurately reflects the reliability and firmness of supply characteristics of MATEP's service obligation, and without the benefit of receiving proposals from independent load serving entities to reflect a comparable level of service as

part of LMEC's solicitation, MATEP sought an expert opinion on the question of how to appropriately quantify the value of the level of service comparable to that provided by MATEP.

Please find attached, the response prepared by Charles River Associates that reflects a "base case" analysis of what is supportable for a reliability surcharge. We believe, when added to the index price from the 4 Blackfan RFP, the resulting all-in price would reflect a level of service comparable to that provided by MATEP.

MATEP appreciates LMEC's interest in discussing these matters further as expressed in LMEC's correspondence of June 17, 2021 and the MATEP team looks forward to discussing these materials with you and LMEC at your earliest convenience.

Should you have any questions on these matters, please do not hesitate to contact me.

Sincerely,

Joe Dalton
President & CEO

EXHIBIT 4

RESTATED UTILITIES CONTRACT

by and between

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

and

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.

dated as of October 31, 1997

Date: June 1, 1998

To: Signatory parties to Restated Utilities Contract dated as of October 31, 1997

From: MATEP, LLC.

Effective June 1, 1998, the following notification changes for the seller shall be in effect:

1. Section 15. Dispute Resolution, Section (a) ii
   Delete: Associate Vice President for Facilities and Environmental Services of Harvard
   and
   Insert: Vice President of Marketing of Advanced Energy Systems Management Company, Inc.

   Delete: Vice President for Administration of Harvard
   and
   Insert: President and Chief Operating Officer of Advanced Energy Systems Management Company, Inc.

2. Section 18. Notices
   Delete: If to Harvard: Harvard University, Holyoke Center, Suite 880, 1350 Massachusetts Avenue, Cambridge, Massachusetts with a copy to: Office of the General Counsel, Holyoke Center, Suite 880, 1350 Massachusetts Avenue, Cambridge, Massachusetts
   and
   Insert:

   If to the Seller:

   MATEP LLC
   C/O President and Chief Operating Officer
   Advanced Energy Systems Management Company, Inc.
   474 Brookline Avenue
   Boston, Massachusetts 02215
   Facsimile: (617) 732-2734
   Telephone: (617) 732-2700

   With copy to:

   MATEP LLC
   C/O Vice President and General Counsel
   Advanced Energy Systems Management Company, Inc.
   One Main Street
   Post Office Box 9150
   Cambridge, Massachusetts 02142-9150
   Facsimile: (617) 225-4831
   Telephone: (617) 235-4610

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RESTATED UTILITIES CONTRACT dated as of October 31, 1997 between PRESIDENT AND FELLOWS OF HARVARD COLLEGE ("Harvard") and THE BRIGHAM AND WOMEN'S HOSPITAL, INC. (the "User") (the "Restated Utilities Contract") restating the Utilities Contract, dated as of October 1, 1980, by and between Harvard and the User (the "Original Contract"), as amended by the First Amendment, dated as of August 29, 1983 (the "First Amendment"), as further amended by the Second Amendment, dated as of October 1, 1991, by and between Harvard and the User, and as further amended by the Third Amendment, dated as of October 31, 1997, by and between Harvard and the User.

INTRODUCTION

WHEREAS, Harvard, for its own use and the use of certain nonprofit hospitals and clinics with a teaching and research affiliation with Harvard (the "Hospitals and Clinics"), has undertaken the development and construction of a total energy plant and related distribution system (the "Plant") in the Roxbury section of Boston. The primary purpose of the Plant is to replace an obsolete energy plant and to supply all the electricity, steam, and chilled water needs of the Harvard Medical School, Dental School and School of Public Health and those facilities of the Hospitals and Clinics which are located in the same geographic area of Boston. The Plant was designed to meet such needs as estimated by Harvard and the Hospitals and Clinics;

WHEREAS, the User has extensive facilities located in the area capable of being served by the Plant and is or is the successor to one of the Hospitals and Clinics for whose use the Plant was designed and built;

WHEREAS, the Original Contract has been amended pursuant to the First Amendment, the Second Amendment, and the Third Amendment; and

WHEREAS, the parties wish to restate in a single agreement the terms and conditions upon which the User and the other Current Users (as defined below) agree to take and pay for their electricity, steam and chilled water requirements from the Plant and the terms and conditions upon which Harvard agrees to cause the Plant to be operated to supply such requirements, by incorporating into this Restated Utilities Contract the Original Contract, the First Amendment, the Second Amendment, and the Third Amendment, and further desire to correct the definition of the term "CPI" in the Third

Amendment to correct a mutual mistake of the parties with respect to this definition;

NOW THEREFORE, in consideration of the respective covenants, agreements, and conditions hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Basic Undertakings of Harvard.

(a) Reliability of Supply. Harvard acknowledges that a reliable supply of the User's requirements for Utilities is critical to the User. Accordingly, subject to the terms and conditions hereinafter set forth, Harvard shall, except to the extent prevented by a breach by the User of any of its material obligations under this Restated Utilities Contract or by Force Majeure: (i) provide continuous delivery of the User's requirements for each Utility to the User (7 days a week, 24 hours a day) up to the Committed Capability (for the combined demands of all Current Users), and (ii) avoid non-delivery of such Utilities at any time.

(b) Priority of Supply. Harvard's obligation to provide the User's requirements for Utilities up to the Committed Capability (for the combined demands of all Current Users) as provided in this Restated Utilities Contract shall take precedence over any provision of steam, electricity, or chilled water to any Customer other than a Current User. Harvard shall have the right to provide steam, electricity, or chilled water to other Customers:

(i) on an as-available basis, to the extent the Committed Capability exceeds the combined demands of all Current Users; or

(ii) on a firm basis, to the extent that the actual capability of the Plant exceeds the Committed Capability (provided, that such excess capability shall not have been committed to the User pursuant to Section 2(b)(i));

provided, that in either case, such sales do not interfere with the operations, capability, or reliability of the Plant or with Harvard's ability to serve the User.

(c) Comparability. Harvard and the User acknowledge that the Utilities to be provided pursuant to this Restated Utilities Contract are to be provided on the basis of pricing comparable to pricing available in a

competitive market for levels of service comparable to that required to be provided by Harvard pursuant to this Restated Utilities Contract, all as more specifically provided in this Restated Utilities Contract.

2. The Basic Undertakings of the User.

(a) Requirements. Subject to the terms and conditions hereinafter set forth, the User agrees that:

(i) the User will take from the Plant its total requirements for electricity, steam, and chilled water needed by its hospital or clinic facilities located in the geographic area served by the Plant to the extent the Committed Capability from time to time exceeds the combined demands of all other Current Users (Schedule 1 describes the existing facilities and other properties of the User located in the geographic area served by the Plant and specifically identifies any facilities, other properties, or parts thereof that will not acquire Utilities from the Plant); and

(ii) the User will pay the applicable charges provided for in this Restated Utilities Contract. If the User expands its facilities by the acquisition of additional properties for which other utility service is already provided, it may convert (but, to the extent of such existing service or any expansion of such service to cover additions or improvements to such additional properties, shall not be required to convert) those properties to take utilities from the Plant. In all other instances, hospital or clinic facilities acquired or constructed by the User in the geographic area served by the Plant shall obtain utilities from the Plant to the extent the Committed Capability from time to time exceeds the combined demands of all other Current Users.

(b) Expansions. Notwithstanding the provisions of subsection (a) of this Section 2, and without limiting the obligations of Harvard to maintain the Plant as provided in Section 6, or the obligations of the User under subsection (a) of this Section 2:

(i) Harvard will not be obligated to undertake any Expansion of the Plant beyond the Committed Capability. Delivery of Utilities to meet any increase after the Effective Date in the User's requirements for any Utilities that cannot be served by the Plant without such Expansion shall be upon terms and conditions mutually acceptable to the User and Harvard; provided, that no such Expansion shall interfere with the ability of the

Plant or the BECO Tie Lines or, when constructed, the Back-Up Distribution System to meet the requirements of the other Current Users for Utilities immediately prior to such Expansion. If, after good-faith negotiations, Harvard and the User do not reach agreement on such terms and conditions, then the User may obtain such additional requirements from alternative suppliers and, upon request of the User, Harvard and the User shall negotiate in good faith the terms of a wheeling or service agreement for interconnection of such alternative suppliers to the Plant and transmission or distribution of such additional requirements from such alternative suppliers, to the extent of available capacity at the Plant or the BECO Tie Lines or, when constructed, the Back-Up Distribution System to effect such interconnection and transmission or distribution, all at rates and upon terms and conditions as the parties reasonably may agree; provided, that:

(A) if Harvard and the User cannot agree on the rates, terms, and conditions of service for interconnection and transmission or distribution at the time the User requires the alternative supply of Utilities, then the User may elect to require interconnection and transmission or distribution over or through the Plant, to the extent of available capacity at the Plant to effect such interconnection and transmission or distribution, by notice to Harvard, whereupon: (1) Harvard shall provide such interconnection and transmission or distribution service at the price specified by Harvard (the "Owner Price") until such time as the actual price may be determined pursuant hereto (the "Actual Price"), (2) the Actual Price shall be determined pursuant to the dispute resolution procedures of Section 15 of this Restated Utilities Contract (provided, that if construction of new interconnection or transmission or distribution facilities, or upgrades or expansions of existing interconnection or transmission or distribution facilities, is required to effect such interconnection and transmission or distribution service, then (x) Harvard shall own and operate such interconnection or transmission or distribution facilities, and (y) the Actual Price shall not be less than the cost reasonably incurred by Harvard to construct such interconnection and transmission or distribution facilities, including debt service and a reasonable return on equity, each amortized over a period reasonable under the circumstances), and (3) if the Actual Price is less than the Owner Price, Harvard promptly shall remit the difference to the User plus interest thereon at the Interest Rate, or if the Actual Price is greater than the Owner Price, the User

promptly shall remit the difference plus interest thereon at the Interest Rate; and

(B) in obtaining and transmitting or distributing such alternative supplies and in making such interconnection (including any such new interconnection or transmission or distribution facilities), the User and such alternative supplier shall not, and Harvard shall not be required to, interfere with the operations, capability, or reliability of the Plant or the BECO Tie Lines or, when constructed, the Back-Up Distribution System or, subject to the rights of the User hereunder, with Harvard's ability to serve other Customers.

(ii) To the extent Harvard elects to undertake an Expansion, such Expansion (A) shall be at Harvard's sole cost and expense, including the cost of scheduled, partial shutdowns to interconnect the Plant to new Customers, and (B) shall not interfere with the operations, capability, or reliability of the Plant or the BECO Tie Lines or, when constructed, the Back-Up Distribution System or with Harvard's ability to serve the User. Harvard and the User shall consult periodically, but no less than annually, concerning the actual capability of the Plant and future planned increases or decreases in the actual capability of the Plant, and Harvard shall give the User reasonable advance notice of significant increases or decreases in such actual capability. If requested by the User, Harvard and the User will negotiate in good faith regarding the possible purchase by the User of additional steam, electricity, or chilled water that are to become available by reason of an Expansion; provided, that: (x) no party shall be obligated to sign a contract with respect to such Expansion, and (y) nothing in this subsection (b)(ii) of this Section 2 shall derogate from the User's rights under subsection (b)(i) of this Section 2.

(c) Provision of Utilities.

(i) The User shall not, directly or indirectly, sell, resell, or otherwise provide any Utilities to any person except as may be agreed subsequently by Harvard and the User from time to time.

(ii) The provisions of subsection (c)(i) of this Section 2 shall not be deemed to restrict (or to require Harvard's consent for) (A) provision by the User of Utilities delivered by Harvard to the User under the terms of this Restated Utilities Contract to the tenants, occupants, or other users of the buildings of the User

otherwise served by Harvard under this Restated Utilities Contract, or (B) without limiting the assignment provisions set forth in Section 13 of this Restated Utilities Contract, the sale by the User of one or more of such buildings to other third parties.

(iii) Notwithstanding the provisions of subsections (c)(i) and (c)(ii) of this Section 2, in making any provision of Utilities to any other person (including such tenants, occupants, other users, or any other third parties), the User (A) shall comply with applicable law, (B) shall not take any action, or omit to take any action, that would cause Harvard to become regulated as a public utility, electric utility, or the like, under any applicable law, and (C) shall not, and Harvard shall not be required to, interfere with the operations, capability, or reliability of the Plant or the BECO Tie Lines or, when constructed, the Back-Up Distribution System, or, subject to the rights of the User hereunder, with Harvard's ability to serve other Customers.

(d) BECO Tie Lines.

(i) The parties understand that, as of the Effective Date: (A) the BECO Tie Lines are available to provide up to 30 MW of electrical capacity to the Users via the existing distribution system associated with the Plant; and (B) the full Tie Line Capacity is dedicated by Boston Edison Company to the provision of electricity to Harvard needed by the Plant or to deliver the Committed Capability to the Current Users, and that any capacity in excess of that needed by the Plant or to deliver the Committed Capability to the Current Users is dedicated to Harvard for the benefit of the Current Users.

(ii) Harvard and the User agree that:

(A) as between Harvard and the Current Users, the Tie Line Capacity shall be available to the Plant and the Current Users for the provision of electricity under the terms and conditions of this Restated Utilities Contract at the same level of priority as that applicable to the provision of Utilities as set forth in Section 1(b) of this Restated Utilities Contract; and

(B) Without limiting the provisions of Section 5(a)(ii) of this Restated Utilities Contract, Harvard shall not charge stand-by charges or reservation fees or the like to the User for such Tie Line Capacity

unless and until (and only to the extent) such charges, fees, or the like are imposed on Harvard by the Boston Edison Company, and then only to the extent such charges, fees, or the like relate to Tie Line Capacity in excess of that needed by the Plant or needed to deliver the Committed Capability to the Current Users. Should the Boston Edison Company impose any such charges, fees, or the like with respect to such excess Tie Line Capacity, such charges, fees, or the like shall be apportioned equitably by Harvard among the User and the other Current Users benefitting from such excess Tie Line Capacity, and the User's portion of such equitable apportionment shall be paid monthly by the User pursuant to the provisions of Section 5(d) of this Restated Utilities Contract.

3. Specifications.

(a) Utilities Specifications. Harvard shall deliver Utilities in accordance with the Specifications set forth in Appendix B to this Restated Utilities Contract, as measured at the main switchgear (in the case of electricity) and at the main header (in the case of steam and chilled water).

(b) Quality. Regardless of the Specifications, if the User identifies a problem in the quality of the steam, electricity, or chilled water supplied by Harvard, the User and Harvard shall cooperate to resolve the problem, including amending the Specifications in Appendix B to this Restated Utilities Contract if necessary; provided, (i) that no Specification shall be changed based on the User's request without prior consultation with the other Current Users; (ii) to the extent capital expenditures or additional operating costs are required for the Plant, the Dana-Farber Chiller, the HIM Chiller, the BECO Tie Line or, when constructed, the Back-Up Distribution System to meet such amended Specifications when operated in accordance with this Restated Utilities Contract, such expenditures or costs amortized over a period reasonable under the circumstances, shall be borne by each of the Current Users if such expenditures or costs shall have been approved in advance by both a Majority of Current Users and two-thirds in number of the Current Users; and (iii) in the absence of such approval, such costs and expenditures shall be borne only by such Current Users as shall have approved such costs and expenditures.

(c) Out-of-Specification Deliveries. If Harvard determines that steam, electricity, or chilled water is not in compliance with the Specifications, Harvard shall

immediately (i) notify the User and provide the details of the excursion or noncompliance, (ii) determine the cause of the excursion or non-compliance, and (iii) take immediate remedial action to bring the steam, electricity, or chilled water into compliance with the Specifications.

(d) Monthly Analyses. At Harvard's expense, Harvard shall conduct monthly chemical analyses of steam and chilled water samples at the Plant to ensure compliance with the Specifications and the other terms of this Restated Utilities Contract.

4. Deliveries and Metering.

(a) Deliveries. Utilities will be delivered to the User at the points at or adjacent to the User's facilities as described in Schedule 2 to this Restated Utilities Contract. The User shall make arrangements to accept deliveries of utilities in accordance with the Specifications set forth in Appendix B to this Restated Utilities Contract. Chilled water shall be returned to the Plant at no less than 55 degrees Fahrenheit, steam condensate shall be returned to the Plant at a temperature of approximately 150 degrees Fahrenheit, and appropriate charges shall be imposed for material variations in the quantity or temperature of returned water or condensate as provided in subsection (d) of Section 5. The User will make its own arrangements for the distribution of its utilities requirements to its facilities located in the geographic area served by the Plant from that delivery point. Harvard or its operating agent will maintain the distribution systems up to the indicated delivery point. Any distribution system components (other than metering equipment) on the User's side of the relevant boundary shall constitute the property of, and shall be the responsibility of, the User, whether or not such components were originally installed by the User or Harvard.

(b) Metering. Harvard and the User shall follow the requirements for maintenance, testing, and recalibration of meters, the procedures for reading meters, the procedures for correction of bills for inaccurate meter readings, and the other procedures set forth in Appendix F to this Restated Utilities Contract.

5. Utility Charge.

The User agrees to pay each month with respect to the preceding month a utility charge (the "Utility Charge") equal to the sum of the charges for Electricity, Steam and Chilled Water determined as follows:

(a) Electricity.

(i) During each month of the Term, the charge for Electricity (the "Electricity Charge") shall be the dollar amount the User would have been required to pay to the Boston Edison Company had the User acquired its electricity from that source instead of from the Plant, as adjusted until the Subsidy Termination Date by deducting therefrom the Electric Subsidy Amount. (For purposes of this subsection (a) and subsection (c) of this Section 5, references to the Boston Edison Company shall include any corporate successor of that Company or any regulated public utility which takes over the business of providing electric service to the general public in the area served by the Plant.) The amount that would have been paid to the Boston Edison Company shall be determined on the basis of the User's demand and consumption from the applicable rate schedules actually in general use by customers of that Company having demand and consumption characteristics similar to the User, as such schedules are from time to time amended, giving effect to all fuel charges, surcharges and other similar factors relevant to determining the dollar amount the User would have paid had it acquired its electricity from the Boston Edison Company. During any period in which the Plant is unable to meet the User's total requirements for Electricity as a consequence of operating restrictions which prevent the Plant from achieving the Committed Capability, the Electricity Charge shall be the dollar amount the User would have been required to pay the Boston Edison Company had all its Electricity actually consumed been obtained from that source less the actual amount paid to Boston Edison Company for that portion of the User's Electricity which was not obtainable from the Plant.

(ii) Consistent with the comparability principle set forth in Section 1(c), the "applicable rate schedule" described in subsection (a)(i) of this Section 5 shall be construed to mean the Boston Edison Company's "G-3" filed tariff (or, if such tariff is no longer effective, the successor tariff most closely approximating the "G-3" tariff); provided, that:

(A) when a competitive market arises in which alternative supplies of electricity at comparable levels of service with specifications and reliability standards at least equal to those provided in this Restated Utilities Contract are actually available (such that, in the absence of this Restated Utilities Contract, the User, individually or through intermediaries, could contract for and obtain delivery of alternative supplies of electricity) under firm (non-interruptible) agreements, and delivery to the User of such alternative supplies is not prohibited by law, then

(B) the new reference standard shall be the price, from time to time, of such alternative supplies; provided, that such new reference standard shall include (without duplication) appropriate charges for applicable transmission and distribution costs and other costs (e.g., "stranded costs") associated with the restructuring of the electricity market in Massachusetts as such transmission and distribution costs and other costs are charged to customers comparable to the User located in Boston Edison Company's service territory.

(iii) Harvard and the User acknowledge that the provisions of subsection 5(a)(ii) of this Restated Utilities Contract do not change but only clarify the pricing terms agreed by the parties in the Original Contract, as amended by the First Amendment and the Second Amendment, which pricing terms are set forth in subsection 5(a)(i) of this Restated Utilities Contract.

(b) Steam.

(i) Steam Charge. Except to the extent that subparagraph (ii) of this Section 5 (b) shall be applicable, during each month of the Term, the charge for Steam (the "Steam Charge") shall be the sum of (A) $7,093.14 (representing the User's monthly share of the agreed annual cost of the steam line extension which would be required for Boston Edison Company to provide Steam), and (B) the dollar amount the User would have been required to pay to the Boston Edison Company had the User been able to acquire its Steam from that source instead of from the Plant, as adjusted until the Subsidy Termination Date by deducting from said sum the Steam Subsidy Amount. (For purposes of this subsection (b) of Section 5, references to the Boston Edison Company shall include any corporate successor of that Company or any company providing steam to the general public from fossil fuel-burning plants in generally the area of Boston now served by the Boston Edison Company.) The amount that

would have been paid to the Boston Edison Company shall be determined on the basis of the User's demand and consumption from the applicable rate schedules of that Company, as such schedules are from time to time amended, giving effect to all fuel charges, surcharges, and other similar factors relevant to determining the dollar amount the User would have paid had Steam been available and the User been able to acquire its Steam from the Boston Edison Company in the area of Boston now served by that Company. In the event that at any time during the Term the Boston Edison Company shall cease to provide steam to a significant number of commercial enterprises in Boston pursuant to a generally applicable rate structure and fuel charge, the portion of the Steam Charge described in clause (B) of this subparagraph for such month and for all subsequent months shall be derived from a rate structure and fuel charge determined as follows:

(I) All components of the rate structure other than the fuel charge used during the immediately preceding twelve-month period (the "Base Period") in determining the Steam Charge (or if any change occurred in any component during such Base Period which increased the Steam Charge, the rate structure as adjusted to reflect such change) shall become the base rate structure which thereafter shall be adjusted, upward or downward, as the case may be, for the first month and each succeeding month by the CPI, and

(II) The average fuel charge per unit of Steam used in computing the Steam Charge during the Base Period shall be adjusted, upward or downward, as the case may be, so that the fuel charge per unit of Steam used in computing the Steam Charge for the first month and all subsequent months shall bear the same relationship to the Base Period fuel charge per unit of Steam used as the average unit cost of fuel used by the Plant during such month bears to the average unit cost of fuel used by the Plant during the Base Period.

(ii) Alternative Steam Charge. It is recognized by the parties that the provision of steam is neither the primary business of Boston Edison Company nor a regulated business in Massachusetts. Accordingly, while the method of determining the User's Steam Charge set forth in clause (B) of Section 5(b)(i) currently appears to provide an equitable, long-term methodology, it is agreed that if increases or decreases in the Steam Charge attributable to the non-fuel component of such methodology (or the failure of that methodology to require increases or decreases) shall at any time provide

aberrational results when measured against the rate and trend of change in the non-fuel component of the rate structure used by other companies providing steam on a commercial basis from fossil fuel-burning plants in other localities in a manner that is not offset by any special cost factors attributable to the Boston market, then a non-aberrational base rate composed of all non-fuel components of such methodology (the "Base Rate") shall be determined in accordance with Section 15 and the Steam Charge shall thereafter be the sum of:

(A) $7,093.14,

(B) the Base Rate, as adjusted, upward or downward, as the case may be, for the first month and each succeeding month following its determination by the CPI, and

(C) a fuel charge determined by adjusting, upward or downward, as the case may be, the average fuel charge per unit of Steam used in computing the Steam Charge during the twelve-month period immediately preceding the determination of the Base Rate (the "Base Period"), so that the fuel charge per unit of Steam used in computing the Steam Charge for the first month and all subsequent months following the determination of the Base Rate shall bear the same relationship to the Base Period fuel charge per unit of Steam used as the average unit cost of fuel used by the Plant during such month bears to the average unit cost of fuel used by the Plant during the Base Period,

as adjusted until the Subsidy Termination Date by deducting from said sum the Steam Subsidy Amount.

(c) Chilled Water.

(i) During each month of the Term, the charge for Chilled Water (the "Chilled Water Charge") shall be the sum of:

(A) The additional dollar amount the User would have been required to pay to Boston Edison Company for electricity if, in addition to the electricity requirements actually taken from the Boston Edison Company, or from the Plant, as the case may be, the User met its requirements for Chilled Water from User-owned electric chillers and auxiliary equipment which consumed one and one-quarter (1.25) kilowatt hour of electricity for each ton-hour of Chilled Water required;

(B) A monthly operating charge of $4,302.10 for the Longwood Medical Research Institute Building and $64,519.45 for the Brigham and Women's Hospital campus, which sum shall be adjusted annually commencing as of October 1, 1998 and as of each October 1st thereafter to reflect changes in the CPI and User Maximum Available Capacity which occurred during the preceding twelve months; and

(C) The User's then prevailing Capacity Charge,

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as adjusted until the Subsidy Termination Date by deducting from said sum the Chilled Water Subsidy Amount.

(ii) As of the date of this Restated Utilities Contract an initial monthly capacity charge is established for purposes of subsection (c)(i)(C) of this Section 5 (the "Capacity Charge") at $93,406.97 on the assumption that the User's maximum available capacity (the "Maximum Available Capacity") is 8,400 tons per hour and that the tons of Chilled Water actually taken by the User will not exceed the Maximum Available Capacity for any one-hour period or exceed eighty percent of the Maximum Available Capacity for more than three one-hour periods in any calendar month. The initial Capacity Charge shall be treated as the User's prevailing Capacity Charge until such date as the User's actual hourly consumption of Chilled Water shall at any time exceed the Maximum Available Capacity (except as a consequence of an aberrational non-recurrent incident) or exceed eighty percent of the Maximum Available Capacity for more than three one-hour periods in any calendar month, whereupon a new Capacity Charge and new Maximum Available Capacity shall be determined which new Capacity Charge shall become the prevailing Capacity Charge until such time as the new Maximum Available Capacity shall again be exceeded (on either an absolute basis, except as a consequence of an aberrational non-recurrent incident, or by virtue of the peak one-hour demand exceeding eighty percent thereof for three one-hour periods in any calendar month) thereby requiring additional redeterminations of the Capacity Charge and Maximum Available Capacity. For purposes of the preceding sentence, an incident which causes the User's peak one-hour demand to exceed the Maximum Available Capacity shall be deemed an aberrational non-recurrent incident only if the User advises Harvard of the basis for its conclusion that such incident is unlikely to reoccur and the User's peak one-hour demand does not again exceed the Maximum Available Capacity for any reason, whether or not

similar to the foregoing, at any time during the sixty-day period following such incident. Each time it shall become necessary to establish a new Capacity Charge and Maximum Available Capacity hereunder:

(A) The new Capacity Charge shall be determined by (1) dividing the higher of the User's actual peak one-hour demand or its previously prevailing Maximum Available Capacity by .80, then deducting the previously prevailing Maximum Available Capacity and rounding the result upward to the next one hundred ton amount to derive the incremental capacity needed (the "Incremental Capacity"), (2) multiplying the Incremental Capacity by $10.4123 (the June 1980 monthly cost per ton of incremental capacity), (3) adjusting the resulting dollar amount to reflect changes in the Handy-Whitman Public Utility Electric Light and Power Construction Index (or if unavailable, a comparable index of generally applicable utility construction costs) to reflect changes in the cost of construction occurring subsequent to June 1980 and (4) adding the dollar amount so obtained to the previously prevailing Capacity Charge, and

(B) The new Maximum Available Capacity shall be determined by adding the Incremental Capacity determined under (A) above to the previously prevailing Maximum Available Capacity.

(d) Chilled Water Return and Steam Condensate Return

(i) Chilled Water. The monthly charge imposed by subsection (a) of Section 4 for the return of chilled water to the Plant at temperatures below 55 degrees Fahrenheit shall be determined by (A) multiplying the component of the User's Chilled Water Charge described in Section 5(c)(i) by a fraction the numerator of which is the excess pumping energy required attributable to the additional water used as a consequence of such temperature variation (charged at 2 kilowatt hours per 1000 gallons of extra flow) and the denominator of which is the total kilowatt hours used in computing the User's Chilled Water Charge, and (B) multiplying the dollar amount derived pursuant to clause (A) above by the monthly weighting factor set forth below:

Month	Weighting Factor	Month	Weighting Factor
January	1.0	July	1.5
February	1.0	August	1.5
March	1.0	September	1.4

April	1.1	October	1.3
May	1.3	November	1.1
June	1.4	December	1.0

(ii) Steam Condensate Return Temperature. The monthly charge imposed by subsection (a) of Section 4 for the return of steam condensate at temperatures averaging below 150 degrees Fahrenheit shall be determined by (A) multiplying the monthly average temperature (in degrees) of returned steam condensate below 150 degrees Fahrenheit by .001 (a ratio of the measure of heat required per degree), (B) multiplying the product of the calculation made pursuant to clause (A) above by the monthly fuel adjustment cost for Steam (expressed in dollars per 1000 pounds) and (C) multiplying the dollar amount derived pursuant to clause (B) above by the number of 1000-pound units of steam condensate returned to the Plant at temperatures below 150 degrees during the relevant month.

(iii) Steam Condensate Return Volume. The monthly charge imposed by subsection (a) of Section 4 for failure to return appropriate quantities of steam condensate shall apply where the steam condensate returned is less than 82 percent of sendout and shall be determined by (A) multiplying the number of 1000-pound units of steam condensate below 82 percent of sendout by .1 (a ratio of the measure of heat required to heat the additional water required by the Plant to 150 degrees Fahrenheit from the average temperature at which such water is acquired), (B) multiplying the product of the calculation made pursuant to clause (A) above by the monthly fuel adjustment cost for Steam (expressed in dollars per thousand pounds) and (C) adding to the dollar amount derived pursuant to clause (B) above the monthly cost per 1000 pounds of additional water required by the Plant and the monthly cost per 1000 pounds of demineralizing the additional water required by the Plant.

(e) Statements. Harvard will furnish statements to the User not earlier than the fifth day of each month for all amounts payable by the User with respect to the preceding month. Such statements will be rendered in such detail as the User may reasonably request and shall be subject to corrective adjustments in subsequent periods. All statements shall be due and payable in full on the twenty-fifth day following the date of issuance. Interest will be charged with respect to all sums not paid by the due date at the "base rate" from time to time charged by BankBoston, N.A. or its successor.

(f) Subsidy Amounts.

(i) Introduction. The parties acknowledge that, as was set forth in the Introduction to the First Amendment:

(A) In connection with the financing of the Plant by HEFA, Harvard sought a ruling from the Internal Revenue Service that the revenues derived from the provision of utilities to those Hospitals and Clinics affiliated with Harvard's Medical School would not constitute unrelated business taxable income under the Internal Revenue Code;

(B) The Internal Revenue Service conditioned its favorable ruling on Harvard's commitment to provide a subsidy to each of the Hospitals and Clinics affiliated with Harvard's Medical School, which would reduce the Utilities Charges to each such Hospital and Clinic below the Utilities Charges set forth in the Original Contract; and

(C) Harvard believes that the condition imposed by the Internal Revenue Service was incorrect as a matter of law. However, in order to avoid further delay in providing external financing for the Plant, Harvard accepted the ruling of the Internal Revenue Service and agreed to comply with the condition imposed therein and to provide the Subsidy Amounts as set forth in the first sentences of subsections (a)(i), (b)(i), and (c)(i), and in the second sentence of subsection (b)(ii), of this Section 5 so long as said condition remains relevant to insure the exempt status of any outstanding obligations issued to finance the Plant.

(ii) Cooperation in Determining Electric Subsidy Amount. During any monthly period prior to the Subsidy Termination Date in which the Plant is unable to supply the total requirements for Electricity of all of the Hospitals and Clinics obligated to obtain electric service from the Plant, the User agrees to furnish to Harvard such information concerning the units of electricity consumed by the User during such monthly period as Harvard may reasonably request in order to facilitate the calculation of the Electric Subsidy Amount allocable to the User or any other Hospital or Clinic then obtaining Electricity from the Plant.

(iii) Reduction and Termination of Subsidy Amounts.

(A) Harvard shall have the right:

(I) upon notice provided not less than six (6) months prior to the end of any fiscal year of the User, to reduce the Subsidy Amounts for the User's next succeeding fiscal year by fifty percent (50%) of each of the Electric Subsidy Amount, Steam Subsidy Amount and Chilled Water Subsidy Amount and to terminate the reduced subsidies provided herein upon the end of such fiscal year (the "Standard Subsidy Termination Date"); or

(II) immediately upon notice given at any time on or after the date (the "Immediate Subsidy Termination Date") of the sale, assignment or other transfer by President and Fellows of Harvard College of its direct or indirect interest in MATEP or the Plant and the assignment by President and Fellows of Harvard College of its interest under this Restated Utilities Contract to the transferee of such interest, or the date of the sale, assignment, or other transfer of the revenues from, and the obligation to operate, the Plant, to terminate the Subsidy Amounts.

(B) Effective upon the Subsidy Termination Date, the Subsidy Amounts shall cease to be taken into account for purposes of determining the User's Utility Charges under this Section 5 during the balance of the Term. Harvard must exercise its right to terminate the subsidies herein provided with respect to all Hospitals and Clinics that entered into the First Amendment if it does so with respect to any such institution that remains one of the Hospitals and Clinics then served by the Plant.

(iv) Ancillary Termination Rights. Without limiting the generality of subsection (f)(iii) of this Section 5, it is expressly agreed that Harvard shall have the right to take such action as it may deem necessary or desirable to contest the validity of the condition to the ruling issued by the Internal Revenue Service described in subsection f(i) of this Section 5 or to prepay or repay any indebtedness to HEFA or similar obligations issued to provide external financing for the Plant. It is further agreed that, without limiting the generality of Section 13, Harvard may assign its rights (but not its obligations) under this Restated Utilities Contract to any entity owned or controlled by Harvard to the extent Harvard determines such assignment is

necessary or desirable in connection with any contest of the validity of the condition set forth in the ruling described in subsection (f)(i) of this Section 5.

(g) Parity among Current Users.

(i) If Harvard enters into a contract or other arrangement (including any amendment of a contract) with any other Current User for the sale or other disposition of steam, electricity, or chilled water to any such other Current User on terms and conditions materially more favorable in the aggregate than those set forth in this Restated Utilities Contract, then, at the User's option, Harvard and the User shall amend this Restated Utilities Contract to incorporate into this Restated Utilities Contract substantially the terms and conditions of such new contract or amendment as a whole.

(ii) Harvard shall give the User notice within 30 days after entering into any contract, amendment, or other arrangement with any other Current User for the sale or other disposition of steam, electricity or chilled water, together with a brief description of the terms and conditions and a copy of the documentation setting forth such terms and conditions. If the User elects to incorporate such terms and conditions, Harvard and the User shall meet within 30 days of delivery to the User of such notice from Harvard, and the parties shall use good faith efforts to reach agreement on such terms and conditions, and to conclude final documentation, within 60 days of delivery to the User of such notice from Harvard.

(iii) The provisions of this subsection (g) of this Section 5 shall not apply to (A) contracts or other arrangements for supply, transmission, distribution or interconnection by Harvard with respect to steam, electricity, or chilled water obtained from alternative sources as contemplated by Section 2(b)(i) of this Restated Utilities Contract, (B) provision of steam, electricity, or chilled water by Harvard from Expansions of the Plant after the Effective Date as contemplated by Section 2(b)(ii) of this Restated Utilities Contract, or (C) any Back-Up Distribution System constructed after the Effective Date to serve another Current User similar to that contemplated by Section 6(b).

6. Operation and Maintenance of the Plant.

(a) Operating and Maintenance Standards. Harvard:

(i) shall operate and maintain the Plant so as to be capable of meeting the obligations of Harvard under this Restated Utilities Contract and in compliance with prudent utilities practices, the operating manuals, the safety requirements of the Plant's insurers, and applicable industry codes, as each may be in effect from time to time;

(ii) shall provide all materials and supplies, equipment, tools, utilities, spare parts, fuel, personnel, things, and services necessary for Harvard to operate and maintain the Plant and otherwise to provide the Utilities in accordance with this Restated Utilities Contract; and

(iii) shall maintain at the Plant at all times such materials and supplies, equipment, tools, utilities, spare parts, fuel, personnel, things, and services necessary in accordance with the standards set forth in subsection (a)(i) of this Section 6 to operate and maintain the Plant in accordance with such standards.

(b) Back-Up Distribution System. Harvard shall cooperate with the User in arranging for an engineering assessment, which shall be conducted at the expense of the User, of the technical and financial feasibility of constructing and operating a Back-Up Distribution System so as to enhance the redundancy and reliability of the Plant's electrical service. If the User agrees to proceed with the construction and operation of the Back-Up Distribution System, all costs of such construction and operation shall be at the expense of the User (including capital and operating costs). Harvard shall cooperate with and assist the User in constructing or causing the construction of such Back-Up Distribution System, including in seeking regulatory approvals, third-party consents, and rights-of-way, and in interconnecting the Back-Up Distribution System. Harvard shall operate the Back-Up Distribution System in conjunction with its operation of the Plant for the provision of electricity (up to the Committed Capability) at the User's expense. The User shall be entitled to utilize the Back-Up Distribution System at its expense for transmission of electricity obtained from alternative sources as contemplated by Section 2(b)(i) or Section 21(c). The availability of such Back-Up Distribution System shall not relieve the

User of its obligation to purchase electricity supplied by Harvard (up to the Committed Capability) as set forth in this Restated Utilities Contract.

(c) Alternative Sources of Utilities.

(i) Harvard may, at its option, obtain Utilities from sources other than the Plant (including Boston Edison Company, the Dana-Farber Chiller, or the HIM Chiller) to meet its obligation to provide Utilities under this Restated Utilities Contract; provided, that the provisions of this subsection (c)(i) of this Section 6 shall not be construed to relieve Harvard of its obligation to operate and maintain the Plant as provided in subsection (a) of this Section 6 or of any other obligation under this Restated Utilities Contract.

(ii) The User hereby designates Harvard as its agent for obtaining delivery to the User of alternative sources of steam, electricity, or chilled water, including electricity delivered through the BECO Tie Line or through the Back-Up Distribution System; provided, that with respect to steam, electricity, or chilled water obtained from alternative suppliers as contemplated by Section 2(b)(i), such agency (A) with respect to electricity shall be for purposes of allowing Harvard to function in the role of operator of the interconnected electric distribution system (subject to the priorities to be specified in the emergency response plan in the event of curtailment, as contemplated by Section 6(d)), (B) shall not preclude the User from separately negotiating rates with such alternative suppliers for the User's requirements for Utilities in excess of the Committed Capability, and (C) shall not be construed to relieve Harvard of its obligation to provide the User's requirements for Utilities, up to the Committed Capability, as provided in Section 1 or the User of its obligation to purchase such requirements for Utilities, up to the Committed Capability, as provided in Section 2.

(iii) The User from time to time shall execute, acknowledge, record, register, deliver, or file all such notices, statements, instruments, and other documents, and take such other steps, as may be necessary or advisable to permit Harvard to carry out its obligations with respect to delivery of such alternative sources of Utilities (including operation of any such distribution system).

(d) Outage Response.

(i) Harvard shall prepare a vulnerability study and a comprehensive emergency response plan that identifies critical elements, sources of alternative supply of Utilities, and recovery procedures for outages. The emergency response plan shall be submitted to the User for review and comment and will address such matters as the allocation of deliveries of each Utility during shortages (or during restoration of services) among different types of Utility service and among particular uses at the various other Customers.

(ii) The emergency response plan shall provide that, during any general curtailment of Utilities by Harvard, Harvard shall provide any available dispatch to the critical facilities of the Current Users as a first priority. The emergency response plan shall be reviewed and updated periodically as appropriate.

(iii) If an emergency or outage occurs, Harvard shall immediately (A) notify the User and confer with the User concerning steps to be taken to restore Utilities service, (B) obtain an alternative supply of Utilities to avoid non-delivery of Utilities to the User, and (C) commence measures to remedy the emergency or outage.

(e) Inspection. The User shall have the right during business hours (i) to inspect the Plant, (ii) to inspect Harvard's operating and maintenance records, and (iii) to meet with appropriate Plant and operator personnel. Harvard shall cooperate with the User regarding such inspections, which will be subject to reasonable notice and to appropriate safety standards. Such inspection rights shall not include the right to review Harvard's financial records except as may be necessary to verify billing statements rendered to the User.

(f) Operating Audits. The User, together with the other Current Users, shall have the right to request, at their sole cost and expense, a periodic engineering review by the Audit Engineer. Harvard shall cooperate with the Audit Engineer, including (i) providing access to Plant operating and maintenance records, and (ii) arranging meetings with appropriate Plant and operator personnel.

(g) Consultation; Reports; Planning. Harvard shall consult on a regular basis with the User regarding (i)

planned outages of equipment, (ii) Expansions of the Plant, major overhauls or repairs, and other capital projects, (iii) emergencies and emergency response procedures, (iv) regular operations, (v) significant changes in staffing levels, operations, or operating procedures, (vi) environmental orders, rules, or regulations or other regulatory events affecting the capability or reliability of the Plant, and (vii) any other matters affecting the capability or reliability of the Plant. Harvard periodically (but no less frequently than annually) shall provide to the User written reports on such matters in a reasonable form to be agreed.

(h) Energy Efficiency.

(i) The User shall have the unrestricted right to engage in energy efficiency, conservation or similar measures; provided, that the User shall not have the right to engage in self-generation to meet its requirements for steam, electricity, or chilled water except to the extent that, as set forth in Section 2(b)(i), such requirements exceed the Committed Capability (at the time the particular self-generation project is considered).

(ii) The User shall consult with Harvard periodically, but no less frequently than annually, concerning the User's current and anticipated requirements for steam, electricity, and chilled water. The User also shall provide reasonable advance notice to Harvard of the User's intentions with respect to significant anticipated increases or decreases in the User's requirements and with respect to any such significant anticipated energy efficiency, conservation or similar measures.

(i) Site Security.

(i) Harvard shall maintain appropriate site security measures, including the following:

(A) maintaining access control at all entrances to the Plant;

(B) performing periodic inspection tours of the Plant to monitor conditions related to security;

(C) coordinating security measures with the emergency response plan; and

(D) preparing and implementing detailed security policies and procedures, including but not limited to access, entry, and escort procedures, maintenance of security systems, and policies regarding firearms, explosives, and regulated substances.

(ii) Harvard shall periodically review site security measures in consultation with the User and shall notify the User of all security measures and policies.

(j) Interruptions. Interruptions or reductions in service for inspection, maintenance, alterations, and other similar events will be scheduled in accordance with good engineering practice and insofar as practicable shall be mutually agreed upon by Harvard and the User. In the event of an interruption or reduction, Harvard will use its best efforts to restore the Plant to full service as promptly as practicable.

(k) Subcontracting. Harvard may employ persons of appropriate capability to operate and maintain the Plant as independent operating agents responsible to Harvard, but such employment shall not relieve Harvard of any obligation or liability hereunder.

7. Failure to Pay Utility Charges.

Prompt payment of all Utility Charges is essential to Harvard's ability to continue to serve the User and other persons acquiring utilities from the Plant. The User shall be in default with respect to its obligations under this Restated Utilities Contract if as of the end of any month, the User shall have failed to pay in full all Utility Charges that may then be due hereunder together with all accrued interest. In the event of a default by the User, Harvard shall have the right without releasing the User from its continuing obligations and, in addition to all other remedies available under existing law for breach of this Restated Utilities Contract, to terminate all or any portion of the Utilities provided to the User upon sixty days' prior written notice. Harvard shall be required to resume service from the Plant following a termination or reduction in service occasioned by a User default only if such default shall have been fully cured within the twelve-month period following the date of the aforesaid notice.

8. Cooperation on Legal Matters.

Harvard and the User will cooperate with each other, to the extent that such cooperation is not inconsistent with advice provided by their respective counsel, in all legal, administrative, regulatory and other proceedings that have a direct bearing on the ability of Harvard and the User to perform their obligations under this Restated Utilities Contract or that may affect the total cost of the design, construction, or operation of the Plant.

9. Force Majeure.

(a) Definition of Force Majeure. The term "Force Majeure" as used herein shall have the meaning assigned to such term in Appendix A to this Restated Utilities Contract.

(b) Effect of Force Majeure. If because of Force Majeure, affecting either Harvard or its operating agents, Harvard is unable to carry out its obligations under this Restated Utilities Contract in whole or in part, it shall give the User notice of such Force Majeure at the earliest reasonable date and the obligations of Harvard and the User shall be suspended to the extent made necessary by such Force Majeure and during its continuance. Harvard shall cooperate with the User in mitigating the effect of any interruption in service but shall have no liability to the User or any person claiming through or under the User on account of any injury, loss, damage, or liability in any way attributable to or arising from such Force Majeure.

(c) Economic Hardship. Economic hardship, including the price that Harvard receives for Utilities and Harvard's costs for fuel, for backup, maintenance, or supplemental power, or for other steam, electricity, or chilled water obtained from alternative sources, shall not be considered Force Majeure. Cost increases of Harvard due to Force Majeure shall not be passed through to the User.

(d) Backup Deliveries.

(i) Without limiting the generality of subsections (b) or (c) of this Section 9, Harvard's obligation to supply Utilities under this Restated Utilities Contract shall not be excused for Force Majeure except to the extent that Force Majeure has excused (A) the inability of the Plant to deliver Utilities, and (B) the

unavailability of alternative sources of Utilities, including the Dana-Farber Chiller, the HIM Chiller, the BECO Tie Lines and, upon its completion, the Back-Up Distribution System, for any reason beyond the control, and not caused by the fault or negligence, of Harvard or its agents or affiliates.

(ii) Nothing in subsection (d)(i) of this Section 9 shall be construed (A) to require Harvard to deliver electricity from alternative sources in excess of the capacity of the BECO Tie Line or the capacity of the Back-Up Distribution System upon its completion, as the case may be, as each may be expanded or upgraded from time to time; or (B) to excuse the unavailability of alternative sources of Utilities to the extent caused by the failure of Harvard to contract for firm supply and delivery of such alternative sources of Utilities consistent with the requirements of Section 6(a).

10. Default and Remedies; Cancellation or Suspension.

(a) Events of Default.

(i) An Event of Default for Harvard shall occur hereunder if:

(A) any Deficiency (except to the extent caused by Force Majeure) continues for longer than 336 cumulative hours in any one-month period or 672 cumulative hours in any twelve-month period;

(B) Liquidated Damages paid or payable by Harvard at any time pursuant to subsection (b) of this Section 10 exceeds $500,000;

(C) Harvard (1) shall (a) institute a voluntary case or similar proceeding seeking liquidation or reorganization under the United States Bankruptcy Code or any applicable law, or shall consent to the institution of an involuntary case or similar proceeding thereunder against it, (b) apply for, or suffer the appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers, (c) make an assignment for the benefit of creditors, or (d) admit in writing its inability to pay its debts generally as they become due; or (2) an involuntary case shall be commenced seeking the liquidation or reorganization of Harvard under the United States Bankruptcy Code or any similar proceeding shall be commenced against Harvard under any other applicable law, and (a) the petition commencing the involuntary case is not timely controverted or is not

dismissed within 60 days of its filing, (b) an interim trustee is appointed to take possession of all or a portion of the property, or to operate all or any part of the business of Harvard and such appointment is not vacated within 60 days, or (c) an order for relief shall have been issued or entered therein; or (3) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers of Harvard or of all or a part of its property, shall have been entered; or (4) any other similar relief shall be granted against Harvard under any applicable law;

(D) Harvard fails to maintain insurance as required by Section 11(a);

(E) (1) within 7 days of any Material Casualty, Harvard shall not have commenced diligent efforts to undertake the restoration work required under Section 11(c), or (2) at any time during the course of such restoration work, Harvard shall fail diligently to recommence and pursue such restoration work within 7 days following notice thereof from the User to Harvard and, within 14 days of such notice, to provide reasonable evidence that such restoration work was recommenced within such 7 day period and is being pursued diligently;

(F) Harvard abandons the Plant;

(G) Harvard fails to make when due any material payment required to be made to the User under this Restated Utilities Contract (other than a payment disputed in good faith by Harvard), and such failure shall have continued for 15 days after notice thereof shall have been given by the User to Harvard; or

(H) Harvard fails to observe any other material obligation under this Restated Utilities Contract (except to the extent such failure shall have been caused by Force Majeure or by the breach by the User of any of its material obligations under this Restated Utilities Contract) after notice from the User, and such failure shall not have been cured within 30 days of such notice; provided, that if such failure is capable of cure but is not capable of cure within such 30-day period despite Harvard's diligent efforts to do so, such 30-day period shall be extended by such additional time as is reasonably necessary to cure such failure; provided, further, that such cure is promptly commenced within such 30-day period and is diligently pursued, and that the

aggregate cure period (including the initial 30-day period) shall not exceed 90 days.

(ii) Upon the occurrence and during the continuance of an Event of Default by Harvard, the User shall have the right, in its sole discretion, to do any or all of the following:

(A) terminate this Restated Utilities Contract;

(B) pursue any other remedy set forth in this Section 10 with respect to such Event of Default, subject to the limitations and conditions set forth in this Section 10; or

(C) subject to the limitations set forth in subsection (b)(ii) of this Section 10 and Section 11(e), pursue any and all other remedies available hereunder or at law or in equity.

(b) Liquidated Damages.

(i) Harvard shall pay the User liquidated damages for each Deficiency in accordance with the schedule of liquidated damages set forth on Appendix E ("Liquidated Damages") to this Restated Utilities Contract, except to the extent such Deficiency shall have been caused by Force Majeure. Such Liquidated Damages shall be determined monthly and shall be set according to the cumulative hours of outages and excursions in excess of permissible Specifications for one or more Utility services within such month.

(ii) Except as otherwise expressly provided in this Section 10 or in Appendix G to this Restated Utilities Contract, Harvard's liability for Liquidated Damages as provided in subsection (b)(i) of this Section 10 shall be the User's exclusive remedy for a Deficiency unless and until such time as such Deficiency shall have matured into an Event of Default under subsection (a)(i)(A) or (B) of this Section 10; provided, that nothing in this subsection (b)(ii) of this Section 10 shall be deemed to limit:

(A) the User's exercise of Step-In Rights as provided in subsection (d) of this Section 10 (provided, further, that no Liquidated Damages shall be payable with respect to periods of such Step-In Rights; and provided, further, that Harvard shall continue to be

liable for the User's costs, expenses, and other damages, if any, as provided in the Step-In Procedures);

(B) the User's rights to cancel or suspend deliveries of any Utility or to obtain replacement deliveries of any Utility that Harvard fails to provide in accordance with the terms of this Restated Utilities Contract as provided in subsections (f) or (g) of this Section 10; or

(C) any right or remedy of the User with respect to any other breach by Harvard of its obligations under this Restated Utilities Contract or with respect to any Event of Default by Harvard or any other event or circumstance other than a Deficiency.

(iii) Liquidated Damages which accrue during any month shall be due and payable on the last day of the succeeding month. Each billing statement rendered by Harvard as provided in subsection (d) of Section 5 shall set forth in detail the amount of all Liquidated Damages due for the month, a statement of how each of the Liquidated Damages was calculated, and such other supporting information and documentation as the User reasonably may request.

(iv) The parties acknowledge and agree that the User's actual damages arising from a Deficiency would be difficult or impossible to calculate, and that, in light of the circumstances, the amount of Liquidated Damages set forth in this subsection (b) of this Section 10 and in Appendix E to this Restated Utilities Contract represents a reasonable approximation of such damages and not a penalty.

(v) Notwithstanding the provisions of subsection (b)(iii) or (iv) of this Section 10, or of Section 14, the User shall have the right to set off, against payments due from the User to Harvard under Section 5(d), an amount equal to any Liquidated Damages that have accrued as provided in subsection (b) of this Section 10 but remain unpaid.

(c) Specific Performance. Upon a breach by Harvard of its obligations under this Restated Utilities Contract, including an Event of Default, the User shall have the right (subject to the limitations of subsection (b)(ii) of this Section 10) to obtain specific performance of Harvard's obligations to the extent of such breach. The parties hereby stipulate that the User is relying on Harvard for Utilities services, that the

supply of Utilities by Harvard to the User is unique because it is the only immediately available source of Utilities to meet most of the User's requirements, that it would be virtually impossible for the User quickly to obtain fully adequate substitutes should there be a cessation or interruption in Utilities, and that the award of damages at law may not be an adequate remedy. Accordingly, the parties hereby stipulate that a court of competent jurisdiction shall have the power and authority to grant a request for specific performance where specific performance is an appropriate remedy under applicable law or applicable equitable principles.

(d) Step-In Rights; Buy-Out Rights. Upon the occurrence of a Triggering Event or a Buy-Out Triggering Event, the Majority of Current Users shall have the right to exercise (directly or through a nominee) Step-In Rights or Buy-Out Rights pursuant to, and subject to the terms and conditions specified in, the Step-In Procedures set forth in Appendix G to this Restated Utilities Contract, as follows:

(i) upon a Deficiency Triggering Event, the Majority of Current Users may exercise, or cause their nominee to exercise, Step-In Rights as provided in the Step-In Procedures set forth in Parts 1 and 3 of Appendix G;

(ii) upon an Extended Deficiency Triggering Event, the Majority of Current Users may exercise, or cause their nominee to exercise, Buy-Out Rights as provided in the Step-In Procedures set forth in Parts 2 and 3 of Appendix G; and

(iii) upon an Immediate Triggering Event, the Majority of Current Users immediately shall have the right to exercise, or cause their nominee to exercise, the Step-In Rights or, at their option, the Buy-Out Rights, as provided in the Step-In Procedures.

(e) Remedies Cumulative. Except as expressly provided in subsection (b)(ii) of this Section 10, all rights and remedies of the User hereunder are cumulative of each other and of every other right or remedy which the User may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

(f) Cancellation by the User. Without limiting the provisions of subsections (a) or (b) of this Section 10

or the other provisions of this Restated Utilities Contract, if deliveries cannot be made to the User because either:

(i) The Plant is damaged to the extent of being completely or substantially completely destroyed, or

(ii) The Plant is taken by exercise of the right of eminent domain or a similar right or power, or

(iii) There has been a total interruption of service and the situation causing such interruption cannot be rectified to an extent which will permit Harvard to make deliveries to the User during the Term of this Restated Utilities Contract;

then and in any such case, the User may cancel this Restated Utilities Contract and make such other arrangements to insure the long-term availability of utility service as the User deems appropriate. Such cancellation shall be effected by written notice given by the User to Harvard. In the event of such cancellation, all continuing obligations of the parties shall cease forthwith.

(g) Suspension by the User. The User shall have the right to obtain delivery of alternate supplies of steam, electricity, or chilled water to the extent of any Deficiency, as may be necessary to meet the User's requirements for such Utility, whether due to breach by Harvard of its obligations under this Restated Utilities Contract, Force Majeure, or otherwise. Without limiting the generality of the foregoing, and without limiting the other provisions of this Section 10, in the event of a substantial Deficiency which is likely to last for a substantial period, the User shall be free to make such other arrangements to replace the affected Utility service as it deems appropriate (but only to the extent of the Deficiency), and the obligations of the User under this Restated Utilities Contract shall be suspended to the extent and during the continuance of such Deficiency. If, in order to replace the Utility service affected by such Deficiency, the User is required to incur Replacement Obligations which would make it technologically or financially infeasible to require the User to resume Utilities service from the Plant when such service again becomes available, the User shall advise Harvard of the nature of such Replacement Obligations and request the suspension of the provisions of this Restated Utilities Contract to the extent required by such Replacement

Obligations. Harvard shall not unreasonably withhold its consent to the suspension of the User's obligations under this Restated Utilities Contract to the extent necessary to permit the User to incur Replacement Obligations and the User, recognizing that the prompt resumption of payments to Harvard is essential, agrees to use its best efforts to limit the extent of such Replacement Obligations in a manner that will minimize the adverse financial impact on Harvard.

(h) Other Circumstances. The User may cancel this Restated Utilities Contract or be relieved of its obligations hereunder in whole or in part only as provided in this Section 10.

11. Insurance.

(a) Required Insurance. Harvard shall maintain insurance in accordance with Appendix C to this Restated Utilities Contract with respect to the Plant and to other equipment used or leased by Harvard for the provision of Utilities under this Restated Utilities Contract, such as the Dana-Farber Chiller and the HIM Chiller; provided, that so long as the Plant is owned directly or indirectly by President and Fellows of Harvard College, or the owner of the Plant otherwise meets the financial standards set forth in subsection (b) of this Section 11, President and Fellows of Harvard College (or such other owner) may self-insure for all or any part of such insurance. Harvard shall provide copies of its policies to the User upon request of the User by notice to Harvard. The User shall be identified as a certificate holder on such insurance policies.

(b) Financial Standards. If the Plant is not owned, directly or indirectly, by President and Fellows of Harvard College, the owner of the Plant may self-insure all or any part of the insurance required under subsection (a) of this Section 11 if the aggregate amount of self-insurance and deductibles from time to time does not exceed one-third of the total shareholders' equity of the owner of the Plant as reflected on such owner's then-most recent balance sheet prepared in accordance with generally accepted accounting principles, consistently applied; provided, that such owner shall deliver to the User (i) prior to commencing such self-insurance, and (ii) at least annually thereafter so long as any self-insurance program remains in effect: (x) a statement certified by such owner showing the amount of such self-insurance and deductibles proposed to be carried, and (y) a balance sheet for the fiscal year then

ended, certified by an independent, nationally recognized certified public accounting firm.

(c) Application of Proceeds. Without limiting the provisions of Section 10, Harvard shall apply proceeds of casualty insurance maintained by Harvard pursuant to subsection (a) of this Section 11 (and any self-insured (or deductible) amounts) to repairing or restoring the Plant so that the Plant will be capable of providing the User's requirements for Utilities in accordance with the requirements of this Restated Utilities Contract, if permitted by law, unless the User agrees otherwise.

(d) Liability. The availability or unavailability of insurance coverage or insurance proceeds shall not affect Harvard's liability under this Restated Utilities Contract.

(e) Limitation of Liability.

(i) Without limiting the provisions of Section 10(b), (c), or (d) or any other right or remedy expressly provided in this Restated Utilities Contract, the parties shall not be liable (whether under contract, tort (including negligence), strict liability, or any other cause of or form of action whatsoever other than gross negligence or willful misconduct), for incidental, special, punitive, exemplary, or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

(ii) Harvard shall not be liable for any loss or damage (including Liquidated Damages) that may occur to the User to the extent caused by damage to the Plant which was caused by the negligence of the User or any other Current User, or by the breach by the User or any other Current User of its material obligations under this Restated Utilities Contract or such other Current User's corresponding Utilities Contract, respectively.

(f) Effect on Insurance. Without limiting the right of President and Fellows of Harvard College to self-insure, the provisions of subsection (e) of this Section 11 shall not be construed so as to relieve any insurer (other than President and Fellows of Harvard College or another owner of the Plant meeting the financial standards set forth in Section 11(b), to the extent President and Fellows of Harvard College (or such other owner) shall have self-insured) of its obligation to pay any insurance proceeds in accordance with the

terms and conditions of valid and collectible insurance policies.

12. Property on User's Premises.

Harvard and its operating agents may enter the premises of any User at reasonable times for the purposes of installing, inspecting, testing, repairing and maintaining its equipment. The User will be responsible for all damage to, or loss of, all property and equipment installed on the User's premises.

13. Assignment.

(a) Assignment. This Restated Utilities Contract shall be binding upon and shall inure to the benefit of, and may be performed by, the successors and assigns of the parties; provided, that no assignment, pledge, or other transfer of this Restated Utilities Contract by the User may be made without the written consent of Harvard (which consent shall not be unreasonably withheld) and any lender holding a security interest in Harvard's rights hereunder except for assignments or transfers in connection with a merger or similar corporate reorganization that does not have a material adverse affect on the User's financial position or any outstanding debt issued to finance all or any portion of the Plant and provided further, that no assignment, pledge, or other transfer of this Restated Utilities Contract by either party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Restated Utilities Contract unless consent to the release is given in writing by the other party, or, if the other party has theretofore assigned, pledged, or otherwise transferred its interest in this Restated Utilities Contract, by the other party's assignee, pledgee, or transferee. Upon the request of Harvard, the User shall execute and deliver such assurances, agreements, documents and other instruments confirming its obligations under this Restated Utilities Contract and its consent to the assignment of such obligations by Harvard to any person acquiring Harvard's interest hereunder, as security or otherwise, as such person may reasonably request.

(b) Disposition of Harvard's Interest. By its execution and delivery of this Restated Utilities Contract, and in contemplation of the proposed sale, assignment, or other transfer by President and Fellows of Harvard College of its direct or indirect interest in MATEP or the Plant and the assignment by President and

Fellows of Harvard College of its interest under this Restated Utilities Contract to the transferee of such interest in MATEP or the Plant, or of the sale, assignment, or other transfer of the revenues from, and the obligation to operate, the Plant, and as an inducement to President and Fellows of Harvard College to execute and deliver this Restated Utilities Contract, the User certifies for the benefit of Harvard and such proposed transferee, that:

(i) Effectiveness; No Default. This Restated Utilities Contract is in full force and effect and no default exists thereunder.

(ii) No Termination. This Restated Utilities Contract is not subject to termination as a result of such proposed transfer.

(iii) Certification. The User, as contemplated by subsection (a) of this Section 13 of this Restated Utilities Contract, agrees to execute and deliver to President and Fellows of Harvard College and its proposed transferee in connection with such proposed transfer, a certification to the foregoing effect substantially in the form of Appendix H to this Restated Utilities Contract.

(iv) Release. The User, as contemplated by subsection (a) of this Section 13 of this Restated Utilities Contract, agrees, in connection with such proposed transfer, to release President and Fellows of Harvard College and CMC from liability under this Restated Utilities Contract and the Agency Letter Agreement for the period commencing upon such proposed transfer, substantially in the form of Appendix I to this Restated Utilities Contract.

(v) Support. The User agrees to support President and Fellows of Harvard College and its proposed transferee as either reasonably may request in all legal, administrative, regulatory or other proceedings to which President and Fellows of Harvard College or its proposed transferee is a party in connection with approvals, consents, waivers or exemptions required with respect to such proposed transfer by President and Fellows of Harvard College to its proposed transferee of this Restated Utilities Contract, including, in connection therewith, the subsequent performance by the proposed transferee of the obligations of President and Fellows of Harvard College under this Restated Utilities Contract thereafter.

(vi) Cooperation with Financing. The User agrees, if requested by President and Fellows of Harvard College or its proposed transferee, to enter into a consent and agreement with the Lenders, pursuant to which the User will:

(A) consent to the grant to the Lenders of a security interest in rights under this Restated Utilities Contract;

(B) provide the Lenders with a copy of each notice delivered to Harvard under Section 10 of this Restated Utilities Contract and give the Lenders the same right to cure as Harvard may have under the provisions of Section 10;

(C) consent to the exercise by the Lenders of the rights of Harvard under this Restated Utilities Contract, or the replacement of Harvard thereunder by the Lenders, and to the Lenders' right to assume all the rights and obligations of Harvard under this Restated Utilities Contract; and

(D) provide to the Lenders such information in connection with this Restated Utilities Contract (including resolutions, certificates or other documents relating to the User's authorization to enter into this Restated Utilities Contract and to undertake and perform the obligations set forth herein) as reasonably may be required by the Lenders; and

(E) cooperate in good faith with the reasonable requirements of the Lenders' financing arrangements; provided, that the User shall not be required to take any action which materially would increase its obligations or diminish its rights under this Restated Utilities Contract.

(c) Subsequent Transfers. The provisions of subsection (b) of this Section 13 shall apply to the proposed sale, assignment or transfer by President and Fellows of Harvard College to its proposed transferee. Nothing in this Section 13 shall be construed to require the User to undertake any of the obligations set forth in such subsection (b) of this Section 13 in connection with any subsequent sale, transfer or assignment by such proposed transferee. If President and Fellows of Harvard College elects to effect such proposed sale, transfer or assignment to its proposed transferee (or affiliates of such proposed transferee) through a two- or multi-step transaction, the User agrees to issue (in whole or in

part) such certificate, release, or consent and agreement, and to take such other steps required by such subsection (b) of this Section 13, on one or more occasions or to one or more parties, as President and Fellows of Harvard College reasonably may request.

14. Right of Setoff.

The User shall not be entitled to set off against the payments required to be made by it under this Restated Utilities Contract (i) any amounts owed to it by Harvard or any designated operating agent employed by Harvard or (ii) the amount of any claim by it against Harvard or any designated operating agent employed by Harvard. However, the foregoing shall not affect in any other way the User's rights and remedies with respect to any such amounts owed to it or any such claim by it against Harvard or any designated operating agent employed by Harvard.

15. Dispute Resolution.

(a) Escalation Procedures. If any Dispute shall arise, then the matter shall be resolved by using the following "Escalation Procedures":

(i) Either Harvard or the User may "escalate" the matter by giving notice to the other specifying the nature of the dispute and the proposed language of the resolution.

(ii) If the parties cannot resolve the matter within 10 days, the matter shall be dealt with by the Chief Financial Officer or Treasurer of the User, on behalf of the User and the Associate Vice President for Facilities and Environmental Services of Harvard, on behalf of Harvard, who shall discuss the matter with each other and attempt in good faith to resolve same. If the matter is not resolved within 45 days thereafter, either party may refer the matter to the Vice President for Administration of Harvard, on behalf of Harvard, and the President of the User, on behalf of the User, and the two of them shall resolve the matter within 45 days after they received such referral. If Harvard or the User no longer has an officer designated by each such title, then such matter shall be dealt with, in each case, by an officer with an equivalent level of responsibility.

(b) Performance to Continue. Each party shall continue to perform its obligations under this Restated Utilities Contract during the pendency of a Dispute or

the referral of such dispute to the Escalation Procedures.

(c) Opt-out. The Escalation Procedures shall not apply to any Dispute if, at any time during the pendency of such dispute or the referral of such dispute to the Escalation Procedures, either party informs the other, by notice referring specifically to this subsection (c) of this Section 15, that (i) there is a breach by the other party of its obligations under this Restated Utilities Contract, and (ii) the party giving such notice elects not to use the Escalation Procedures with respect to such Dispute. Upon delivery of such notice, either party may seek from a court of competent jurisdiction any relief to which such party may be entitled under this Restated Utilities Contract.

(d) Exercise of Remedies. The pendency of a Dispute, or a party's referral of a Dispute to the Escalation Procedures, shall not prevent the User from exercising any right or remedy set forth in Section 10 of this Restated Utilities Contract when entitled to do so under Section 10 of this Restated Utilities Contract, and, for avoidance of doubt, it shall not be necessary for the Majority of Current Users to refer any matter to the Escalation Procedures, or to exercise their rights under subsection (c) of this Section 15 to opt-out of the Escalation Procedures, prior to exercising Step-In Rights or Buy-Out Rights when entitled to do so pursuant to the terms of Section 10(d) and of Appendix G to this Restated Utilities Contract.

16. Business Days.

Whenever any payment shall be due hereunder on a day which is not a Business Day, such payment shall be made on the next preceding Business Day. In all other cases in which a day or date may be relevant hereunder, if such day or date is not a Business Day, the action required or permitted to be taken or (to the extent provided in Section 18) the notice deemed to have been received shall be required, permitted, or deemed received as of the next succeeding Business Day.

17. Applicable Law.

This Restated Utilities Contract shall take effect as an instrument under seal and shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts, without giving effect to the principles thereof relating to conflicts of law.

18. Notices.

All notices, requests, demands and other communications which are required or may be given under this Restated Utilities Contract shall be in writing and shall be deemed to have been duly given upon receipt, if personally delivered or if given by a sheriff or constable pursuant to Massachusetts or Federal Rules of Civil Procedure; when transmitted, if transmitted by facsimile, electronic, or digital transmission method (or, if received after 5:00 p.m. Boston, Massachusetts time on a Business Day, or if received on a day other than a Business Day, then on the next Business Day), subject to the recipient confirming by telephone that the recipient has received the notice; upon receipt, if sent for next day delivery by recognized overnight delivery service (e.g., Federal Express); or upon receipt, if sent by certified or registered mail, return receipt requested. In each case, notice shall be sent to the address set forth below or to such other place and with such other copies as either party may designate as to itself by notice to the others, pursuant to this Section 18:

If to Harvard:

Harvard University
Holyoke Center, Suite 880
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
Attn: Associate Vice President
for Facilities and
Environmental Services
Facsimile: (617) 495-9473
Telephone: (617) 495-7563

With a copy to:

Office of the General Counsel
Holyoke Center, Suite 980
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
Attn: Robert E. McGaw, Esq.
Facsimile: (617) 495-5079
Telephone: (617) 495-1280

If to the User:

The Brigham and Women's Hospital, Inc.
75 Francis Street
Boston, Massachusetts 02115
Attn: Jeffrey Otten, President
Facsimile: (617) 732-5343
Telephone: (617) 732-5537

19. Corporate Obligations; Inurement.

This Restated Utilities Contract is the corporate act and obligation of the parties hereto, and any claim hereunder against any trustee, member, director, or officer of either party, as such, is expressly waived. This Restated Utilities Contract shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Restated Utilities Contract, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Restated Utilities Contract; provided, that each Current User shall be a third-party beneficiary of the obligations of each of Harvard and the User under Appendix G to this Restated Utilities Contract and the provisions of Section 10(d) of this Restated Utilities Contract and, without limiting the provisions of Section 20(b) of this Restated Utilities Contract, no term or provision of Appendix G hereto or Section 10(d) of this Restated Utilities Contract may be changed or terminated in any manner that reasonably could be expected to have a material adverse effect on the rights or obligations of the other Current Users without the prior written consent of the Majority of Current Users.

20. Effectiveness and Prior Agreements; Written Changes.

(a) Effectiveness and Prior Agreements. This Restated Utilities Contract shall be effective as of the date hereof and, from such date, shall supersede all prior agreements (including the Current Contract) and shall constitute a complete integration of the agreement between the parties with respect to the subject matter of this Restated Utilities Contract; provided, however, that this Restated Utilities Contract shall not in any way affect the rights of the parties accrued with respect to the period prior to the date hereof under the Current Contract; and provided, further, that subject to Section 2(d) of this Restated Utilities Contract, nothing in this

Restated Utilities Contract shall be construed to amend or to supersede the Agency Letter Agreement.

(b) Written Changes. No term or provision of this Restated Utilities Contract may be changed, waived, discharged, or terminated by any means other than an instrument in writing duly executed by the party against whom the enforcement of the change, waiver, discharge, or termination shall be sought.

21. Term.

(a) Initial Term. The initial term of this Restated Utilities Contract (the "Initial Term") shall expire on September 30, 2015.

(b) Extension of Initial Term. Eight years prior to the end of (i) the Initial Term, or (ii) any extended term as provided herein, Harvard and the User shall meet to negotiate an extension of this Restated Utilities Contract, including the price, terms and conditions under which Harvard will sell and the User will buy future services from the Plant consistent with the provisions of Section 1(b). The User parity requirements of Section 5(g) shall be included in any such extension contract. No party shall be obligated to sign any extension contract, and the failure of Harvard and the User to agree on an extension contract within 12 months will permit Harvard and the User to make other plans (for periods following the expiration of this Restated Utilities Contract); provided, that within 90 days of the expiration of the first such 12 month period (commencing 8 years prior to the expiration of the initial term), Harvard at its option by notice to the User may extend the term until September 30, 2021.

(c) Right of First Offer. After the expiration of the Initial Term or any extended term of this Restated Utilities Contract, Harvard shall not sell to any third party (other than another Current User), and the User shall not purchase from any third party, steam, electricity, or chilled water within the Committed Capability (in the case of Harvard) or within the requirements of the User required to be served by Harvard under this Restated Utilities Contract on the date of such expiration (in the case of the User), unless Harvard or the User, as the case may be, first shall have offered to the other party the right to purchase or sell such steam, electricity, or chilled water, as the case may be, on the same terms and conditions (including price) on which such party proposes to sell to or purchase from such third party (excluding,

however, price components ("Distribution Cost Components") associated solely with Harvard's or the User's costs of constructing additional distribution to connect to such third party, such Distribution Cost Components to be determined following the procedures outlined in Section 15); provided, that such third party shall be a bona-fide third party purchaser or seller, as the case may be; and provided, further, that if the other party declines such offer, then Harvard or the User, as the case may be, may make such sale or purchase on terms no less favorable than those offered to the other party hereto.

22. Counterparts; Delivery.

This Restated Utilities Contract may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same instrument. This Restated Utilities Contract may be delivered by facsimile transmission.

23. Interpretation.

In this Restated Utilities Contract, except as expressly set forth herein or therein:

(a) Definitions. In this Restated Utilities Contract, the terms set forth on Appendix A hereto shall have the meaning assigned to such terms in Appendix A.

(b) Headings. The section and other headings contained in this Restated Utilities Contract, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Restated Utilities Contract;

(c) Words of Limitation. Whenever the words "include", "includes", or "including" are used in this Restated Utilities Contract, they shall be deemed to be followed by the words "without limitation";

(d) Gender; Number. Unless otherwise indicated herein or the context otherwise requires, the masculine pronoun shall include the feminine and neuter, and the singular shall include the plural;

(e) "Or" not Exclusive. The word "or" shall not be deemed exclusive;

(f) No Presumption. This Restated Utilities Contract is the result of negotiations between, and has been reviewed by, each of the parties hereto and their respective counsel. Accordingly, this Restated Utilities Contract shall be deemed to be the product of both parties, and there shall be no presumption that an ambiguity shall be construed in favor of or against either party;

(g) Consultation. The words "consult", "consultation", and the like shall mean the provision of information and the solicitation of views through such means as meetings, technical inspections, or exchange of written information as either party reasonably may request, but (without limiting any other provision of this Restated Utilities Contract) shall not require a party to obtain the consent of the other party with respect to the matter subject to such consultation;

(h) References to Party. References to a party or other person or entity shall include its successors and assigns; provided, that: (i) references made specifically to "President and Fellows of Harvard College" in Sections 5(f), 11, and 13(b) and (c) of this Restated Utilities Contract shall be construed to refer only to President and Fellows of Harvard College and its successors and not to its assigns unless otherwise indicated; and (ii) this Section 23(h) shall not limit the provisions of Section 7 of the form of Release set forth in Appendix I to this Restated Utilities Contract; and

(i) References to Schedules and Appendices. References to a "Schedule" or an "Appendix" shall mean a Schedule or an Appendix to this Restated Utilities Contract, which are attached hereto and which are incorporated herein by reference.

24. Confidentiality.

Each party hereto shall keep confidential all matters disclosed to such party by the other party relating to the Utilities, the Plant, or this Restated Utilities Contract and identified as "Confidential" or "Proprietary"; provided, that such restriction shall not apply to information which is: (a) already in the public domain other than through unauthorized disclosure by the recipient; (b) reasonably required to be disclosed for the performance of the disclosing party's obligations under this Restated Utilities Contract; (c) required by applicable law, any governmental authority, or any

recognized securities exchange; (d) already is known to the recipient other than through unauthorized disclosure by the disclosing party; (e) made to another Current User for the coordination of operational matters, enforcement of rights, or exercise of remedies, or other contractual or operational matters between Harvard and the Current Users or among the Current Users; or (f) made by Harvard or its affiliates for the purpose of interesting an investor or lender (or potential investor or lender) in acquiring an interest, directly or indirectly, in MATEP or the Plant or making loans to Harvard or MATEP.

25. Severability.

If any one or more of the provisions of this Restated Utilities Contract or of any Appendix is determined by a governmental authority of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such determination shall not affect the validity, legality, or enforceability of the remaining provisions.

26. Further Assurances.

The parties hereto agree to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Restated Utilities Contract, and each will take all reasonable actions within its authority to secure the cooperation of its affiliates, agents, and representatives.

IN WITNESS WHEREOF, the parties have executed this contract by their respective officers thereunto duly authorized as of the 31st day of October, 1997.

THE PRESIDENT AND FELLOWS
OF HARVARD COLLEGE

By: _____
Name: Thomas E. Vautin
Title: Associate VP for Facilities and Environmental Services

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.

By: _____
Name:
Title: President

SCHEDULE 1

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.

1. Facilities Serviced by MATEP

Brigham and Women's Hospital	75 Francis Street
Longwood Medical Research Institute	221 Longwood Avenue

2. Exceptions

None.

SCHEDULE 2

THE BRIGHAM AND WOMEN'S HOSPITAL, INC.

Delivery Points

1. Brigham and Women's Hospital Building

Electricity. The delivery point for Electricity is the point at which the wiring for electric service extends two feet over the property line onto the property owned by The Brigham and Women's Hospital, Inc.

Steam and Chilled Water. The delivery point for Steam and Chilled Water is the point in the delivery system tunnel wall under Shattuck Street at which the piping enters the basement of the Brigham and Women's Hospital Building.

2. Longwood Medical Research Building

Electricity. The delivery point for Electricity is the point at which the wiring for electric service extends two feet over the property line onto the property owned by The Brigham and Women's Hospital, Inc.

Steam and Chilled Water. The delivery point for Steam and Chilled Water is the point at which the piping crosses the property line of the property owned by The Brigham and Women's Hospital, Inc. on Longwood Avenue.

DEFINITIONS

"Actual Price" shall have the meaning set forth in Section 2(b)(A)(1) of this Restated Utilities Contract.

"Agency Letter Agreement" shall mean that certain letter agreement, dated as of August 7, 1987, between the User and CMC, whereby the User appointed CMC as its agent for purposes of obtaining from Boston Edison Company back-up power for distribution to the User, a copy of which is attached hereto as Exhibit I.

"Assumed Liabilities" shall mean all amounts currently due or outstanding under contracts of Harvard relating to the Plant and relating to the period after the closing of the exercise of Buy-Out Rights that the Majority of Current Users or their nominee elect at their option to assume in writing upon such closing, as described in Section 2.4 of Appendix G to this Restated Utilities Contract.

"Audit Engineer" shall mean an engineer or engineering firm acceptable to the Current Users.

"Back-Up Distribution System" shall mean transmission or distribution feeds from the distribution system of the Boston Edison Company to the Plant or the User in addition to the BECO Tie Line, or an expansion or upgrade of the Tie Line Capacity of such BECO Tie Line, to be constructed and operated as provided in Section 6(b) of this Restated Utilities Contract.

"Base Period" shall have the meaning set forth in Section 5(b)(i)(I) or 5(b)(ii)(C), respectively, of this Restated Utilities Contract.

"Base Rate" shall have the meaning set forth in Section 5(b)(ii) of this Restated Utilities Contract.

"BECO Tie Lines" shall mean the 3 tie lines owned by the Boston Edison Company which run from the Boston Edison Company's Brighton substation with a nominal capacity rating of 30 MW on the Effective Date.

"Business Day" shall mean any day other than a Saturday or a Sunday or a day on which banks in Boston, Massachusetts are required or authorized by law to be closed.

"Buy-Out Notice" shall mean a notice delivered by the Majority of Current Users to Harvard setting forth that the

Majority of Current Users intend to exercise Buy-Out Rights as provided in Section 2.1 of Appendix G to this Restated Utilities Contract.

"Buy-Out Price" shall mean the fair market value of the Plant Assets, as determined by the appraisal procedure set forth in Section 2.3 of Appendix G to this Restated Utilities Contract, less the sum of (i) the Permitted Debt, plus (ii) all amounts currently owed by Harvard to the Current Users, plus (iii) the Assumed Liabilities.

"Buy-Out Rights" shall mean the right of the Majority of Current Users or their nominee to acquire ownership of the Plant and other Plant Assets, as set out more fully in Section 10(d) of this Restated Utilities Contract and Parts 2 and 3 of Appendix G to this Restated Utilities Contract.

"Buy-Out Triggering Event" shall mean an Extended Deficiency Triggering Event or an Immediate Triggering Event.

"Capacity Charge" shall have the meaning set forth in Section 5(c)(ii) of this Restated Utilities Contract.

"Chilled Water Charge" shall have the meaning set forth in Section 5(c) of this Restated Utilities Contract.

"Chilled Water Subsidy Amount" shall mean the dollar amount determined by multiplying $27,750 by a fraction the numerator of which is the number of units of Chilled Water provided to the User from the Plant during the relevant month and the denominator of which is the number of units of Chilled Water provided to all Hospitals and Clinics from the Plant during the relevant month.

"CMC" shall mean Cogeneration Management Company, Inc.

"Committed Capability" shall have the meaning set forth in Appendix D to this Restated Utilities Contract.

"CPI" shall mean the United States Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, Boston-Lawrence-Salem, MA-NH, All Items (1982-84 = 100) or, if that index is suspended or discontinued, a substitute index determined under the dispute resolution procedures set forth in Section 15 of this Restated Utilities Contract.

"Cure Plan" shall mean a plan for the prevention or cure by Harvard or the Lenders of a Deficiency Triggering Event, an Extended Deficiency Triggering Event, or a Deficiency, and of the causes thereof, as provided in Sections 1.2 or 2.2 of Appendix G to this Restated Utilities Contract, which

plan (i) shall contain reasonable estimates of the cost and time involved in achieving such cure, and (ii) shall be a technically prudent and economically feasible means for effecting such prevention or cure within a time that is reasonably expeditious under the circumstances.

"Current Contract" shall mean the Original Contract, as amended by the First Amendment, the Second Amendment, and the Third Amendment.

"Current Users" shall mean each of the following entities that, on the Effective Date, owned facilities located in the geographic area known as the Longwood Medical Area:

1. Beth Israel Deaconess Medical Center, Inc. (successor by merger to The Beth Israel Hospital Association)
2. The Brigham and Women's Hospital, Inc.
3. Beth Israel Deaconess Medical Center, Inc. (successor by merger to New England Deaconess Hospital)
4. Dana-Farber Cancer Institute, Inc. (formerly known as Sidney Farber Cancer Institute, Inc.)
5. Joslin Diabetes Center, Inc. (formerly known as Joslin Diabetes Foundation, Inc.)
6. The Children's Hospital Corporation (assignee of The Children's Hospital Medical Center)
7. President and Fellows of Harvard College and its successors and assigns.

"Customer" shall mean the persons obtaining steam, electricity, or chilled water directly from the Plant from time to time.

"Dana-Farber Chiller" shall mean the equipment and systems used in the production of chilled water located at and owned by Dana-Farber Cancer Institute, Inc., and leased to Harvard by lease dated as of January 1, 1995.

"Deficiency" shall mean any failure by Harvard to provide continuous delivery to the User of the User's requirements for each Utility meeting the Specifications (7 days a week, 24 hours a day), including any such failure caused by Force Majeure, but excluding any failure to the extent caused by the negligence of the User or any other Current User or by the breach by the User or any other Current User of any of its material obligations under this Restated Utilities Contract or such other Current User's corresponding Utilities Contract, respectively.

"Deficiency Notice" shall mean a notice delivered by the Majority of Current Users to Harvard setting forth that the Majority of Current Users intend to exercise Step-In Rights as provided in Section 1.1 of Appendix G to this Restated Utilities Contract.

"Deficiency Triggering Event" shall mean a Deficiency in Utility service affecting two or more Current Users for a continuous period of 168 hours, or for an aggregate of 168 hours in any 30-day period; provided, however, that no Deficiency Triggering Event shall be a Deficiency Triggering Event if caused by Force Majeure unless the Deficiency caused by such Force Majeure cannot be cured by Harvard but can be cured by the Majority of Current Users or their nominee upon such exercise of Step-In Rights, including, for example, a legal or other disability affecting Harvard but not affecting the Majority of Current Users or their nominee.

"Dispute" shall mean any dispute between the parties with respect to this Restated Utilities Contract or the matters set forth therein.

"Distribution Cost Components" shall mean the components of the price charged by Harvard to a third party Customer, or to the User by a third party supplier, as the case may be, in the circumstances contemplated by Section 21(c) of this Restated Utilities Contract attributable solely to the costs of constructing additional interconnection, transmission or distribution facilities to connect such third party Customer or supplier to Harvard or to the User, respectively.

"Effective Date" shall mean October 31, 1997, which date was the Effective Date under the Third Amendment.

"Electricity Charge" shall have the meaning set forth in Section 5(a)(i) of this Restated Utilities Contract.

"Electric Subsidy Amount" shall mean the dollar amount determined by multiplying $27,834 by a fraction the numerator of which is the number of kilowatt hours of Electricity provided to the User from the Plant during the relevant month and the denominator of which is the aggregate kilowatt hours of Electricity consumed during the relevant month (irrespective of whether the electricity so consumed is provided from the Plant or from other sources) by all Hospitals and Clinics at facilities for which they are obligated to take Electricity from the Plant to the extent such service is available.

"Escalation Procedures" shall mean the procedures set forth in Section 15(a) of this Restated Utilities Contract.

"Event of Default" shall mean any of the events specified in Section 10(a)(i) of this Restated Utilities Contract.

"Expansion" shall mean any addition to or modification of the Plant (other than routine maintenance, major maintenance, repair, restoration, or any minor modification or addition) that has the effect of increasing the capability of the Plant to produce and deliver over its distribution system additional steam, electricity, or chilled water beyond the Committed Capability.

"Extended Deficiency Triggering Event" shall mean a Deficiency in Utility service affecting two or more Current Users that continues for a continuous period of 180 days; provided, however, that no Extended Deficiency Triggering Event shall be an Extended Deficiency Triggering Event if caused by Force Majeure unless the Deficiency caused by such Force Majeure cannot be cured by Harvard but can be cured by the Majority of Current Users or their nominee upon such exercise of Buy-Out Rights, including, for example, a legal or other disability affecting Harvard but not affecting the Majority of Current Users or their nominee.

"First Amendment" shall mean the First Amendment to the Original Contract, dated as of August 29, 1983, by and between Harvard and the User.

"Force Majeure" shall mean any unforeseeable event beyond the control, and not caused by the fault or negligence, of the affected party or its agents or affiliates, including flood, drought, earthquake, tornado, lightning, fire, explosion, war, riot, civil disturbances, third-party strikes or other labor stoppages by third parties, sabotage by third parties, or similar cataclysmic occurrences.

"Harvard" shall mean President and Fellows of Harvard College, subject to the proviso to Section 23.5(g) of this Restated Utilities Contract.

"HEFA" shall mean the Massachusetts Health and Educational Facilities Authority.

"HIM Chiller" shall mean the equipment and systems used in the production of chilled water located on the Effective Date at the Harvard Institutes of Medicine, owned by President and Fellows of Harvard College, and leased to MATEP pursuant to the Lease Agreement dated as of February 27,

1996 between Harvard for Harvard Institutes of Medicine and MATEP.

"Hospitals and Clinics" shall have the meaning set forth in the first paragraph of the portion of this Restated Utilities Contract entitled "Introduction".

"Immediate Subsidy Termination Date" shall have the meaning set forth in Section 5(f)(iii)(A) of this Restated Utilities Contract.

"Immediate Triggering Event" shall mean an Event of Default with respect to bankruptcy or insolvency of Harvard, failure by Harvard diligently to restore the Plant upon a Material Casualty, or abandonment of the Plant by Harvard, each as described more particularly in Section 10(a)(i)(C), (E), or (F), respectively, of this Restated Utilities Contract.

"Incremental Capacity" shall have the meaning set forth in Section 5(c)(A)(1) of this Restated Utilities Contract.

"Initial Term" shall mean the initial term of this Restated Utilities Contract, as described in Section 21(a) of this Restated Utilities Contract.

"Interest Rate" shall mean the "base rate" of BankBoston, N.A., or its successor plus 1% per annum.

"Lenders" shall mean the financial institutions (other than Harvard or an affiliate of Harvard) providing Permitted Debt to Harvard to finance the ownership, operation, and maintenance of the Plant.

"Liquidated Damages" shall have the meaning set forth in Section 10(b) of this Restated Utilities Contract.

"Majority of Current Users" shall mean a weighted majority of the Current Users, the vote of each Current User being weighted in the proportion that the Utility costs billed to such Current User by Harvard or its agents or representatives in the previous complete fiscal year of the Plant bears to the Utility costs billed to all Current Users in such previous complete fiscal year.

"MATEP" shall mean Medical Area Total Energy Plant, Inc.

"Material Casualty" shall mean (i) any damage to the Plant, the Dana-Farber Chiller, or the HIM Chiller which is expected to cause the actual capability of the Plant to produce and deliver Utilities to be reduced in the

aggregate by more than 10% of the Committed Capability with respect to any Utility service, or (ii) any material damage to any boiler, turbine, generator, steam line, or cooling tower.

"Maximum Available Capacity" shall have the meaning set forth in Section 5(c)(ii) of this Restated Utilities Contract.

"Original Contract" shall mean the agreement entitled "Utilities Contract", dated as of October 1, 1980, by and between Harvard and the User.

"Owner Price" shall have the meaning set forth in Section 2(b)(i)(A)(1) of this Restated Utilities Contract.

"Permitted Debt" shall mean all senior debt amounts (including principal, accrued interest, fees, and penalties) due to the Lenders and secured by the Plant Assets and meeting the requirements set forth in Section 3.5.1 of Appendix G to this Restated Utilities Contract.

"Plant" shall have the meaning set forth in the first paragraph of the portion of this Restated Utilities Contract entitled "Introduction".

"Plant Assets" shall mean the Plant, the Plant site, the Plant Contracts, the Plant permits, the Plant insurance policies, the HIM Chiller, the Dana-Farber Chiller, the Back-Up Distribution System, Harvard's rights to the BECO Tie Lines, and all materials and supplies, equipment, tools, utilities, spare parts, fuel, drawings, manuals, operating records, accounts, contract rights, and other assets of Harvard (whether held directly or indirectly and whether owned legally or beneficially) necessary to, or used by Harvard in, the operation of the Plant and the provision of steam, electricity, and chilled water to the Customers of Harvard (including the provision of Utilities to the User under this Restated Utilities Contract).

"Plant Contracts" shall mean each Utilities Contract with each Current User, each contract for supply or transportation of fuel or other utilities to the Plant, each agreement for transmission or distribution of Utilities to a Current User, and each material service contract with equipment manufacturers or vendors, but excluding, for avoidance of doubt, each operating and maintenance contract, management contract, consulting contract, contract with an affiliate of Harvard, and contract not material to the operations or maintenance of the Plant.

"Replacement Obligations" shall mean obligations incurred by the User to obtain replacement service with respect to a Deficiency, as described in Section 10(g) of this Restated Utilities Contract.

"Replacement Operator" shall mean an entity (other than Harvard or an affiliate of Harvard, or the operator of the Plant at the time of a Deficiency Triggering Event or of an Extended Deficiency Triggering Event) designated by the Lenders to operate and maintain the Plant as provided in Sections 1.2 or 2.2 of Appendix G to this Restated Utilities Contract.

"Restated Utilities Contract" shall mean the Original Contract, as amended by the First Amendment, the Second Amendment, and the Third Amendment, and as restated in this Restated Utilities Contract.

"Second Amendment" shall mean the Second Amendment to the Original Contract (as amended by the First Amendment), dated as of October 1, 1991, by and between Harvard and the User.

"Specifications" shall mean the specifications set forth on Appendix B to this Restated Utilities Contract.

"Standard Subsidy Termination Date" shall have the meaning set forth in Section 5(f)(iii)(A).

"Steam Charge" shall have the meaning set forth in Section 5(b)(i) of this Restated Utilities Contract.

"Steam Subsidy Amount" shall mean the dollar amount determined by multiplying $27,750 by a fraction the numerator of which is the number of units of Steam provided to the User from the Plant during the relevant month and the denominator of which is the number of units of Steam provided to all Hospitals and Clinics from the Plant during the relevant month.

"Step-In Procedures" shall mean the procedures set forth on Appendix G to this Restated Utilities Contract.

"Step-In Rights" shall mean the right of the Majority of Current Users or their nominee to direct the operation and management of the Plant in place of, and as agent for, Harvard, as set out more fully in Section 10(d) of this Restated Utilities Contract and Parts 1 and 3 of Appendix G to this Restated Utilities Contract.

"Step-Out" shall mean the relinquishment of managerial and operational direction of the Plant by the Majority of Current Users to Harvard, the Lenders, or the Replacement Operator, as the case may be, as provided in Part 1 of Appendix G to this Restated Utilities Contract.

"Subsidy Amounts" means the Chilled Water Subsidy Amount, the Electric Subsidy Amount, and the Steam Subsidy Amount, collectively.

"Subsidy Termination Date" shall mean the earlier of the Standard Subsidy Termination Date or the Immediate Subsidy Termination Date.

"Term" shall mean the Initial Term plus any extension of the Initial Term made pursuant to Section 21(b) of this Restated Utilities Contract.

"Tie Line Capacity" shall mean the electrical transmission or distribution capacity of the BECO Tie Lines, which on the Effective Date was equal to a nominal capacity rating of 30 MW.

"Third Amendment" shall mean the Third Amendment to the Original Contract (as amended by the First Amendment and the Second Amendment), dated as of October 31, 1997, by and between Harvard and the User.

"Triggering Event" shall mean a Deficiency Triggering Event or an Immediate Triggering Event.

"User" shall mean The Brigham and Women's Hospital, Inc.

"Utilities" shall mean steam, electricity, or chilled water, individually or collectively, meeting the Specifications.

"Utilities Contracts" shall mean this Restated Utilities Contract, each other Restated Utilities Contract, dated as of October 31, 1997, between Harvard and each other Current User (other than Harvard), and the Restated Memorandum of Agreement for Utilities Contract, dated as of October 31, 1997, by and among University Operations Services, Harvard Medical School, and Harvard School of Public Health.

"Utility Charge" shall have the meaning set forth in Section 5 of this Restated Utilities Contract.

Appendix C

INSURANCE

Harvard shall maintain insurance in accordance with the schedule below and may self-insure for all or any part of such insurance (subject to the proviso to the first sentence of Section 11(a) and to Section 11(b) of this Restated Utilities Contract).

Type	Minimum Coverage[1]	Increases
Commercial General Liability	$75 million	Limits reviewed every 5 years in consultation with User
Failure to Supply and Blackout/Brownout	$35 million	Limits reviewed every 5 years in consultation with User
Property, including business interruption coverage, extra expense, ICC and demolition	replacement cost	Increased annually to reflect changes to replacement cost
Boiler and Machinery, including business interruption coverage and extra expense	replacement cost	Increased annually to reflect changes to replacement cost
Worker's Compensation	statutory limit	Limits reviewed every 5 years in consultation with User
Auto liability	$5 million/person, $10 million/accident	Limits reviewed every 5 years in consultation with User
Fidelity	$2 million	Limits reviewed every 5 years in consultation with User
Pollution	$50 million	Limits reviewed every 5 years in consultation with User

[1] Minimum coverage shall be available to the Plant whether or not coverage is provided under "blanket" policies.

SPECIFICATIONS

ELECTRICITY SPECIFICATION[1]

	Nominal	Minimum	Maximum	Permissible Excursion
Voltage	13,800	13,600	14,200	Can vary no more than 5% above maximum or below minimum for not more than 15 minutes.
Frequency (Hertz)	60	60	60	Maximum frequency changes of +/- 0.4 Hertz to 2 second maximum time error per day with a manual 24 hour adjustment.
Short Circuit Duty[2]	470 MVA	N/A	N/A	
Voltage Flicker	N/A	N/A	+/- 3%	

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1 The system will supply 13,800 volt, 3-phase, 3-wire, 60 Hertz alternating current. All direct connected medium voltage switchgear must be rated 15 KV and 500 MVA. Specifications for electricity are measured at the main switchgear of the Plant.

2 This is based on the electrical system in the Plant.

CHILLED WATER SPECIFICATION[3]

	Nominal	Minimum	Maximum	Permissible Excursion
Supply Pressure	120 psig	115 psig	150 psig	Can vary no more than 5% above maximum or below minimum for not more than 60 minutes.
Return Pressure	80 psig	75 psig	90 psig	
Supply Tempera-ture	40°F	39°F	44°F 44×1.05 =46.20°F	Can vary no more than 5% above maximum or below minimum for not more than 60 minutes.
Return Tempera-ture	55°F	55°F	N/A	Subject to charge calcula-ted as in Section 5(d) of this Restated Utilities Contract.

[3] Specifications for chilled water are measured at the main header of the Plant.

STEAM SPECIFICATION[4]

	Nominal	Minimum	Maximum	Permissible Excursion
Supply Pressure	120 psig	110 psig	135 psig	Can vary no more than 5% above maximum or below minimum for not more than 30 minutes.
Temperature[5]	360°F	350°F	370°F	No excursion above maximum or below minimum permitted.
Total Dissolved Solids	N/A	N/A	2.0 ppm	Can vary no more than 10% above maximum for not more than 30 minutes.
Sodium	N/A	N/A	1.0 ppm	Can vary no more than 10% above maximum for not more than 30 minutes.

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4 Specifications for steam are measured at the main header of the Plant.

5 Steam Temperature is based on saturation with a maximum of 10°F superheat at the Plant.

CONDENSATE SPECIFICATION[6]

	Nominal	Minimum	Maximum	Permissible Excursion
Pressure	20 psig	N/A	60 psig	
Temperature	160°F	150°F	170°F	Can vary no more than 5% above maximum for not more than 30 minutes.
Conductivity	1 μMHO	N/A	8 μMHO	Can vary no more than 5% above maximum for not more than 30 minutes.
PH	6.0	5.5	9.2	No excursion above maximum or below minimum permitted.
Silica	N/A	N/A	40 PPB	

[6] Condensate Specification is for User return condensate, and is not a Plant specification. Therefore it is not subject to liquidated damages, but will be the standard for rejecting condensate and potential customer price adjustment or compensation. See Section 5(d) of this Restated Utilities Contract.

COMMITTED CAPABILITY

Committed Capability shall mean the capability of the Plant, including its distribution systems, to produce and deliver Utilities to all Customers on the Effective Date, as set forth in the table in Part I below, subject to the conditions set forth in Part II below.

6x6.8 MW diesels
2x11 MW STG

I. Committed Capability

Utility	Capability
Electricity	62.8 MW
Steam	550,000 lbs/hr
Chilled Water	38,925 Tons

II. Conditions

- Provision of electricity may require reliance on the BECO Tie Lines under some operational circumstances.
- Steam capability is based on distribution limits of combined steam headers and minimum 84% condensate return.
- Chilled water capability is limited by cooling tower capacity on the Effective Date, with a design wet bulb temperature of 74 degrees F and a cooling water temperature of 85 degrees F, and includes the capability of the Dana-Farber Chiller and the HIM Chiller. Chilled water capability equals the sum of the Maximum Available Capacities as of the Effective Date of each of the Current Users under Section 5(c)(iii) of each of their respective Utilities Contracts, and is subject to the provisions of Section 5 of this Restated Utilities Contract. Chilled water capability shall not be increased due to any increase in the Maximum Available Capacity of any Current User as provided in Section 5(c)(iii) of this Restated Utilities Contract after the Effective Date.
- Committed Capability is subject to scheduled outages of production equipment and to Force Majeure.

Appendix E

LIQUIDATED DAMAGES

Hours of Outages Per Month[1]	Amount
First 3 hours or part thereof	No Charge
Next 6 hours or part thereof	$500/hour
Next 36 hours or part thereof	$1,500/hour
Next 54 hours or part thereof	$2,000/hour
Any additional hours or part thereof[2]	$5,000/hour

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1 Hours are for each Deficiency in the provision of one or more of steam, electricity, or chilled water service per User. All dollar amounts shall be adjusted as of each October 1 after the Effective Date in proportion to the change in the CPI since the prior October 1.

2 Subject to the limit set forth at Section 10(b)(ii) of this Restated Utilities Contract.

METERING

(1) Metering Equipment.

a) Harvard shall supply, own, and maintain the metering equipment necessary to record the quantity of the Utilities, as well as the temperature and pressure of the steam and chilled water, furnished to the User by Harvard, and to record the quantity, temperature and pressure of chilled water and condensate returned by the User to the Plant. The metering equipment for steam and chilled water shall be located at or near the delivery point for such Utilities or, upon mutual agreement of Harvard and the User, at another more convenient location. The metering equipment for electricity shall be located on the User's premises with the exact location to be mutually agreed upon by the parties hereto; provided, however, that the User shall provide Harvard and its operating agent reasonable access to such metering equipment for purposes of reading, maintaining, replacing, or repairing the same.

b) In addition to such metering equipment, Harvard shall supply, at the User's expense, the equipment necessary to provide to the User remote pressure, temperature and flow signals for steam and chilled water and to provide remote pulse signals for electricity. The User shall own and maintain such equipment. The User shall likewise supply, own and maintain the equipment necessary to receive such signals as well as the wiring interconnecting such equipment to Harvard's equipment providing the signals.

(2) Reading of Meters. Meter readings for billing purposes are received electronically. The User shall have the right, by giving reasonable advance notice to Harvard, to have its representative review telemetering data during normal business hours.

(3) Testing.

a) Harvard shall, at its own cost and expense, have all the meters as well as the equipment providing the remote signals to the User tested and certified for accuracy by an independent, qualified third party mutually acceptable to Harvard and the User at least once

every calendar year. Each such testing and certification shall be conducted with reference to the standards of the manufacturer of the measuring devices, as such standards may change from time to time in accordance with industry practices for the equipment involved. Harvard shall provide the User with reasonable advance notice of each such test, and shall allow the User's representative to be present and witness the same. Harvard shall provide the User with a written report of each such test and certification promptly upon completion thereof.

b) If either Harvard or the User shall at any time believe that any meter electronically registers incorrectly, it shall notify the other party of its desire to have a special test of such meter conducted. Such special test shall be conducted on a date and time mutually acceptable to Harvard and the User, and in accordance with the procedures and requirements set forth in Section 3(a) of this Appendix F. The expense of any User-requested special test shall be borne by the User unless upon such testing a meter is found to register beyond the permissible limits of error set forth in Section 3(c) of this Appendix F.

c) Each meter shall be deemed to be working satisfactorily, and the recordings thereof shall be deemed acceptable for billing purposes, if it is found to register inaccurately by no more than +/- 2% at the meter.

(4) Adjustments for Inaccurate Meters.

a) If a meter fails to register, or if the measurement made by a meter is found to be inaccurate upon an annual or special test check by more than the permissible limits of error set forth in Section 3(c) of this Appendix F, such meter immediately shall be calibrated, repaired or replaced, and an adjustment shall be made correcting all measurements by the defective or inaccurate meter for billing purposes as set forth in Sections 4(b) and 4(c) of this Appendix F. Each such adjustment shall be for both the amount of the inaccuracy and the period of the inaccuracy.

b) An adjustment shall be made correcting all measurements by a defective or inaccurate meter for billing purposes as follows:

i) Harvard and the User shall attempt in good faith to agree upon an estimate of the adjustment

necessary to correct the measurements made by such meter on the basis of all available information, including such guidelines as may have been agreed upon by the parties;

ii) in the event that Harvard and the User cannot agree on the amount of the adjustment necessary to correct the measurements made by such meter, they shall estimate the amount of the necessary adjustment on the basis of the amount of the inaccuracy as reflected by the latest test check of such meter or, in the case of a defective meter, on the basis of deliveries of the relevant Utility or returned condensate or chilled water during periods of similar operating conditions when such meter was found to be defective;

iii) in the event that Harvard and the User cannot agree on the actual period during which the inaccurate measurements were made or when a meter was defective, the period during which the measurements are to be adjusted shall be deemed to have begun on the date which is the earlier of (A) the date midway between the date the meter was found to be defective or inaccurate and the date of the last annual or special test check of such meter, and (B) the date one year prior to the last day of such period; and

iv) the difference between the previous payments by the User for the period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to Harvard under this Restated Utilities Contract.

c) Billings for the period beginning on such test date until the next annual test check shall be in accordance with the calibrated or repaired meter.

(5) Audit of Metering Equipment and Billing Procedures. The User shall have the right to conduct an annual audit of the metering equipment and the billing procedures, at its own cost and expense, upon reasonable advance notice to Harvard, and to the extent requested in such notice.

STEP-IN PROCEDURES

Part 1. Step-In Rights

1.1 Exercise of Step-In Rights.

1.1.1 If an Immediate Triggering Event shall have occurred, the Majority of Current Users or their nominee shall have the right to exercise Step-In Rights immediately upon notice to Harvard.

1.1.2 In the event of a Deficiency in Utility service affecting two or more Current Users for a period of 120 hours, or for an aggregate period of 120 hours in any 30-day period, that if continued would give rise to a Deficiency Triggering Event, the Majority of Current Users may deliver to Harvard a Deficiency Notice. Notwithstanding the provisions of Section 18 of this Restated Utilities Contract, a Deficiency Notice transmitted by facsimile, electronic or digital transmission otherwise complying with the provisions of Section 18 of this Restated Utilities Contract shall be deemed to have been duly given when transmitted, whether received before or after 5:00 p.m. Boston, Massachusetts time, subject to the recipient confirming by telephone that the recipient has received the notice.

1.1.3 Unless Harvard or the Lenders shall have submitted a Cure Plan conforming with the respective requirements of Section 1.2 of this Appendix G, the Majority of Current Users or their nominee also may exercise Step-In Rights as follows:

(i) if the Deficiency which may give rise to a Deficiency Triggering Event involves the loss of one or more Utilities, then Step-In Rights may be exercised upon the later of (A) the time 48 hours after delivery of such Deficiency Notice, or (B) the actual occurrence of the Deficiency Triggering Event; or

(ii) if the Deficiency which may give rise to a Deficiency Triggering Event does not

involve the loss of one or more Utilities, then Step-In Rights may be exercised upon the later of (A) the time 30 days after delivery of such Deficiency Notice, or (B) the actual occurrence of the Deficiency Triggering Event.

For purposes of this Section 1.1.3 of this Appendix G, a "loss of one or more Utilities" shall be deemed to have occurred if there is (x) a reduction in the quantity of one or more Utilities delivered to such Users from that required by their respective Utilities Contracts or (y) a deviation from the Specifications with respect to one or more Utilities, which in either event significantly impairs the ability of such Users to perform a key function of such Users' operations that are supported by one or more of the Utility services during the period of time giving rise to the Deficiency Triggering Event.

1.2 Cure Plans by Harvard or the Lenders. At any time prior to or during the exercise of Step-In Rights:

1.2.1 In the case of a Deficiency Notice or a Deficiency Triggering Event, Harvard may submit to the Current Users a Cure Plan. If such Cure Plan contains Harvard's undertaking to use its best efforts to remedy the causes of the Deficiency Triggering Event, and to prevent or cure such Deficiency Triggering Event, as soon as practicable (where "best efforts" shall mean all efforts which are commercially reasonable without regard to cost), then the Majority of Current Users or their nominee shall suspend the exercise of Step-In Rights (or, if prior to the exercise of Step-In Rights, shall refrain from exercising Step-In Rights) so long as Harvard diligently pursues such Cure Plan and prevents or cures the applicable Deficiency Triggering Event and its causes within the time period set forth in the Cure Plan.

1.2.2 In the case of any Triggering Event, if the Lenders shall have foreclosed upon the Plant or exercised any other remedy requiring possession and control of the Plant by such Lenders, and shall have designated a Replacement Operator to operate and maintain the Plant, the Lenders may submit to the Current Users a Cure Plan. The Majority of Current Users shall accept the Lenders' Cure Plan and Step-Out (or, if prior to the exercise of Step-In Rights, shall refrain from exercising Step-In Rights), as reasonably provided in the Lenders' Cure Plan, if the Replacement Operator is reasonably qualified and experienced

in the operation and maintenance of facilities similar to the Plant.

1.2.3 Upon resuming or assuming direction of the Plant's operation and maintenance under a Cure Plan, Harvard or the Replacement Operator, as the case may be, diligently and expeditiously shall cure the Deficiency Triggering Event and its causes.

1.3 Performance of Contractual Obligations. During the exercise of Step-In Rights, the following shall apply:

1.3.1 The User shall continue to perform its contractual obligations under this Restated Utilities Contract.

1.3.2 The Majority of Current Users or their nominee shall, in consultation with and at the request of Harvard, use good-faith efforts to pursue a cure of the causes of the Deficiency Triggering Event. The costs of such efforts to cure shall be borne by Harvard so long as such costs were prudent in amount under the circumstances.

1.3.3 The Majority of Current Users or their nominee shall use good-faith efforts to comply with the requirements of the Plant Contracts and the Plant permits; provided, however, that (i) the costs of such compliance shall be borne by Harvard (through the application of funds pursuant to Section 1.4.1 of this Appendix G or otherwise); and (ii) the Current Users at no time shall have any obligation to cure past defaults by Harvard of its obligations under such Plant Contracts or under any other contract, instrument or arrangement of Harvard or relating to the Plant, or to assume any liability under such Plant Contracts or other such contracts, instruments or arrangements.

1.4 Application of Funds.

1.4.1 During the exercise by the Majority of Current Users of Step-In Rights, the User shall continue to be liable for all amounts due to Harvard under this Restated Utilities Contract. The Majority of Current Users (or their nominee) on behalf of Harvard shall receive and apply such amounts, and all other receipts of Harvard related to the Plant (including amounts due from other Current Users under corresponding Utilities Contracts, and

insurance proceeds and condemnation awards), in the following order of priority: (i) first, to such Majority of Current Users, as reimbursement (without duplication) for all costs and expenses actually incurred in exercising Step-In Rights (including in complying with the requirements of the Plant Contracts and Plant permits) and curing the applicable Triggering Event; (ii) second, to the Lenders, in the amounts required under outstanding debt instruments with respect to Permitted Debt; (iii) third, subject to Section 11 of each of the Current Users' respective Utilities Contracts, to compensate the Current Users for any damages to which they may be entitled under their respective Utilities Contracts, whether incurred prior to or after the exercise of Step-In Rights; and (iv) fourth, to Harvard.

1.4.2 For avoidance of doubt:

(i) the User shall not be entitled to Liquidated Damages under Section 10(b) of this Restated Utilities Contract that otherwise would accrue with respect to any period during which the Majority of Current Users shall have exercised Step-In Rights; and

(ii) the right of the Majority of Current Users to pay costs, expenses and damages as provided in Section 1.4.1 of this Appendix G shall not be construed as a waiver of any claim the User may have against Harvard in the event such amounts are insufficient to pay the total amount of such costs, expenses and damages.

1.5 No Transfer of Title. In no event shall the Majority of Current Users' election to exercise Step-In Rights be deemed to constitute a transfer of title to the Plant or a transfer or assumption of any of Harvard's obligations or liabilities to any Current User, the Lenders, the counterparties to any Plant Contract, or to any other person, by any Current User or the nominee of the Majority of Current Users, whether such obligations or liabilities arise out of ownership or operation of the Plant or otherwise.

1.6 Liability. Subject to the provisions of Section 1.4 of this Appendix G, in the event that the Majority of Current Users elect to exercise Step-In Rights, they shall have no liability to Harvard in connection therewith, including any liability for costs and expenses of operating and maintaining the Plant, for any and all damages to person or property resulting from the Plant's operation and maintenance, or for debt service to the

Lenders or any other obligation of Harvard with respect to the Plant, except for the gross negligence or willful misconduct by any party acting on behalf of the Current Users in connection with the exercise of Step-In Rights.

1.7 Agency. In the exercise of Step-In Rights, Harvard irrevocably appoints the Majority of Current Users or their nominee to act as Harvard's agent, and shall be authorized in such capacity to take all such actions as Harvard would be authorized to take if it were operating the Plant in compliance with this Restated Utilities Contract.

1.8 Step-Out.

1.8.1 Following an exercise of Step-In Rights, the Majority of Current Users or their nominee shall operate and maintain the Plant until the first to occur of the following:

(i) in the case of a Deficiency Triggering Event, such Deficiency Triggering Event, and the causes of such Deficiency Triggering Event, shall have been cured and could not reasonably be expected to resume upon Step-Out;

(ii) Harvard or the Lenders shall have submitted a Cure Plan meeting the respective requirements of Section 1.2 of this Appendix G and shall be pursuing such Cure Plan as provided in such Section 1.2; or

(iii) the Majority of Current Users shall have elected to Step-Out, by 10 days' notice to Harvard.

1.8.2 For avoidance of doubt, Step-Out by the Majority of Current Users pursuant to any of the provisions of Section 1.8.1 of this Appendix G, or the act of the Majority of Current Users in refraining to exercise Step-In Rights pursuant to Section 1.2 of this Appendix G, shall not be construed as a waiver of any right or remedy available to the User under this Restated Utilities Contract.

Part 2. Buy-Out Rights

2.1 Exercise of Buy-Out Rights.

2.1.1 If an Immediate Triggering Event shall have occurred, the Majority of Current Users or their nominee shall have the right to exercise Buy-Out Rights immediately upon notice to Harvard; provided, that solely in the case of an Immediate Triggering Event relating to failure to commence diligent efforts to undertake the restoration work required under Sections 10(a)(i)(E)(1) or 11(c) of this Restated Utilities Contract, the Majority of Current Users shall not exercise Buy-Out Rights unless Harvard shall have failed to commence such diligent efforts after 7 days' notice from the Majority of Current Users.

2.1.2 In the event of a Deficiency in Utility service affecting two or more Current Users for a continuous period of 150 days, the Majority of Current Users may deliver to Harvard a Buy-Out Notice.

2.1.3 Unless Harvard or the Lenders shall have submitted a Cure Plan conforming with the respective requirements of Section 2.2 of this Appendix G, the Majority of Current Users or their nominee also may exercise Buy-Out Rights upon the later of (i) the time 30 days after delivery of the Buy-Out Notice, and (ii) the actual occurrence of the Extended Deficiency Triggering Event.

2.2 Cure Plans by Harvard or the Lenders.

2.2.1 In the case of a Buy-Out Notice or an Extended Deficiency Triggering Event, Harvard may submit to the Current Users a Cure Plan at any time prior to the exercise of Buy-Out Rights. If such Cure Plan contains Harvard's undertaking to use its best efforts to remedy the causes of the Deficiency which was the subject of the Buy-Out Notice and to prevent or cure the applicable Extended Deficiency Triggering Event, as soon as practicable (where "best efforts" shall mean all efforts which are commercially reasonable without regard to cost), then the Majority of Current Users or their nominee shall refrain from exercising Buy-Out Rights so long as Harvard diligently pursues such Cure Plan, prevents or cures the applicable Extended Deficiency Triggering Event and cures such Deficiency and its causes within the time period set forth in the Cure Plan.

2.2.2 In the case of any Buy-Out Triggering Event, if the Lenders shall have foreclosed upon the Plant or exercised any other remedy requiring possession and control of the Plant by such Lenders, and shall have designated a Replacement Operator to operate and maintain the Plant, the Lenders may submit to the Current Users a Cure Plan at any time prior to the exercise of Buy-Out Rights. The Majority of Current Users shall accept the Lenders' Cure Plan and shall refrain from exercising Buy-Out Rights, as reasonably provided in the Lenders' Cure Plan, if the Replacement Operator is reasonably qualified and experienced in the operation and maintenance of facilities similar to the Plant; provided, however, that the Majority of Current Users may exercise Buy-Out Rights notwithstanding such Lenders' Cure Plan if the Current Users assume or guarantee the Permitted Debt as contemplated by the proviso to Section 3.5.1 of this Appendix G.

2.2.3 Upon resuming or assuming direction of the Plant's operation and maintenance under a Cure Plan as provided in this Section 2.2 of this Appendix G, Harvard or the Replacement Operator, as the case may be, diligently and expeditiously shall cure the causes of the Buy-Out Triggering Event or the Deficiency which was the subject of the Buy-Out Notice.

2.2.4 For avoidance of doubt, the act of the Majority of Current Users in refraining from exercising Buy-Out Rights pursuant to the provisions of Sections 2.1 or 2.2 of this Appendix G shall not be construed as a waiver of any right or remedy available to the User under this Restated Utilities Contract.

2.3 Appraisal Procedure. Upon a Buy-Out Triggering Event, Harvard and the Majority of Current Users each shall appoint an independent appraiser, each of whom shall determine within 15 days of the Buy-Out Triggering Event the fair market value of the Plant Assets, where "fair market value" shall be the price that a buyer (other than Harvard or any Current User) who is not under compulsion to buy would be willing to pay for the Plant Assets unencumbered by any liabilities. If the appraisers agree on such fair market value, the agreed value shall be the fair market value. If they disagree, either Harvard or the Majority of Current Users may apply to the American Arbitration Association in Boston, Massachusetts to appoint a third independent appraiser, who shall appraise the fair market value within 15 days, and the fair market value shall be deemed to be the average of the two numerically

closest values or, if the values are equidistant, the middle value. If either Harvard or the Majority of Current Users fails to appoint an appraiser, or if the appraisal to be prepared by the appraiser appointed by Harvard or the Majority of Current Users is not delivered to the other party by the date 15 days after the Buy-Out Triggering Event, then the value determined by the other appraiser shall be the fair market value.

2.4 Closing. The closing of the exercise of Buy-Out Rights shall occur on a Business Day and at a place in Middlesex County or Suffolk County, Massachusetts designated by the Majority of Current Users at least 30 days (but no more than 90 days) after delivery of the Buy-Out Notice. From the date of a Buy-Out Notice until such closing the parties shall continue to perform all their obligations under this Restated Utilities Contract. At such closing:

2.4.1 The Majority of Current Users or their nominee shall pay to Harvard the Buy-Out Price in immediately available funds.

2.4.2 The Plant Assets shall be assigned to the Majority of Current Users or their nominee, free and clear of liens and encumbrances other than those that secure the Permitted Debt.

2.4.3 The Majority of Current Users or their nominee shall assume (i) the Assumed Liabilities, (ii) the obligations of Harvard under the Plant permits relating to the period after such closing, and (iii) the Permitted Debt.

Part 3. General Provisions

3.1 Relations among the Current Users. In exercising any right or power set forth in this Appendix G, the Current Users may act according to any procedure, and upon any terms and conditions, as the Majority of Current Users may agree from time to time; provided, that such procedures, terms and conditions shall be consistent with the other provisions of this Restated Utilities Contract (including this Appendix G).

3.2 Turn-Over by Harvard. Upon and during the exercise by the Majority of Current Users or their nominee

of Step-In Rights or Buy-Out Rights, as the case may be, Harvard shall, and shall cause the Plant's operator (and any other person or entity within the control of Harvard) to:

(i) give the Majority of Current Users or their nominee access to and direction of the operation and maintenance of the Plant to the extent necessary to enable the Majority of Current Users or their nominee to exercise Step-In Rights or Buy-Out Rights, as the case may be; and

(ii) cooperate in effecting an orderly transfer of such operation and maintenance, including transfer of the Plant Assets.

3.3 Insurance Proceeds. Upon exercise of Step-In Rights or Buy-Out Rights, insurance proceeds and self-insured (or deductible) amounts described in Section 11(c) of this Restated Utilities Contract shall be assigned to the Majority of Current Users or their nominee, on behalf of the Current Users, for the purpose of effecting repair or restoration of the Plant.

3.4 Power of Attorney. For purposes of carrying out the provisions of and exercising the rights, powers and privileges granted by Section 10(d) of this Restated Utilities Contract and this Appendix G, Harvard hereby irrevocably constitutes and appoints the Majority of Current Users or their nominee as its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and to perform any acts that are required for the Majority of Current Users or their nominee or their agents or representatives to exercise Step-In Rights or Buy-Out Rights upon the occurrence of a Triggering Event or a Buy-Out Triggering Event, respectively, and to operate and maintain the Plant, including the enforcement of any contracts between Harvard and third parties with respect to the operation or maintenance of the Plant, and the making of any filings with governmental authorities with respect to the operation and maintenance of the Plant, in each case upon and during the continuance of the exercise by the Majority of Current Users or their nominee of Step-In Rights. This power of attorney is a power coupled with an interest and cannot be revoked during the Term. In the exercise of such power of attorney, neither the Majority of Current Users nor their nominee (i) shall exercise any rights with respect to loans or financing arrangements to which Harvard may be a party or

by which Harvard or its assets may be bound, or (ii) shall enter any amendment, modification, or supplement to any Utilities Contract with any Current User that reasonably could be expected materially to increase the rights of the Current User which is the counterparty to such Utilities Contract or materially to increase the obligations of Harvard thereunder.

3.5 Restriction on Debt; Relationship with Lenders.

3.5.1 Neither Harvard nor any affiliate of Harvard shall create, assume, or suffer or permit to exist on or with respect to any Plant Assets any lien, mortgage, deed of trust, pledge, charge, easement, encumbrance or other security interest securing any debt, charge, guarantee, liability, or other obligation, or incur, create, assume, or suffer or permit to exist any debt, charge, guarantee, liability, or other obligation secured by the Plant Assets, unless it first shall have been established that the aggregate total principal amount of such obligations does not exceed 75% of the fair market value of the Plant Assets at the time such obligation or security interest is incurred, created, assumed, or suffered or permitted to exist, pursuant to the following procedure:

(i) Each time that Harvard desires to incur, create, assume or suffer or permit to exist any such security interest or obligation, or to increase the principal amount thereof by an increment of more than $1,000,000 (or by $1,000,000 in the aggregate since the last determination of the fair market value of the Plant Assets), Harvard shall deliver advance notice to the Majority of Current Users; and

(ii) The fair market value shall be determined through an appraisal procedure substantially the same as the procedure set forth in Section 2.3 of this Appendix G (except that the time periods set forth in such Section 2.3 shall be measured from the date of such notice rather than from the occurrence of a Buy-Out Triggering Event).

3.5.2 Notwithstanding any other provision of this Appendix G or in this Restated Utilities Contract to the contrary, the foreclosure rights of the Lenders

under any mortgage or security interest of the Lenders with respect to Permitted Debt in the Plant Assets shall take precedence over the Buy-Out Rights set forth in this Appendix G; provided, that the Lenders shall not exercise foreclosure rights if the Current Users agree to assume or guarantee the Permitted Debt upon the exercise of Buy-Out Rights.

3.5.3 Harvard will cause each of the Lenders to acknowledge in a written instrument issued directly to the User the rights of the User and the other Current Users under Section 10(d) of this Restated Utilities Contract and this Appendix G prior to entering into any financing or security arrangement with any of the Lenders and prior to granting any security interest in the Plant Assets or in any Utilities Contract with any Current User.

3.5.4 The Majority of Current Users shall provide to the Lenders a copy of each Deficiency Notice or Buy-Out Notice and each notice delivered under Section 2.1.2 of this Appendix G, and a copy of the appraisal prepared by the appraiser appointed by the Majority of Current Lenders pursuant to Section 2.3 of this Appendix G.

3.6 Consultation. Without limiting the other provisions of this Appendix G, following the occurrence of any material interruption in Utility service or any significant Deficiency, or the delivery of any Deficiency Notice, Harvard and the Current Users shall consult with each other with regard to the causes thereof and the means to prevent a Deficiency Triggering Event or Extended Deficiency Triggering Event from occurring. Harvard and the Current Users in good faith attempt to agree upon and devise a joint plan for preventing future occurrences of such Deficiencies, Deficiency Triggering Events, and Extended Deficiency Triggering Events.

3.7 Memorandum of Agreement. At the request of the User, a memorandum of the Step-In Rights will be recorded with the Suffolk County, Massachusetts Registry of Deeds and with the Suffolk County, Massachusetts Registry District of the Land Court.

FORM OF ESTOPPEL CERTIFICATE

[NAME OF USER]
Certificate

[DATE]

[NAME & ADDRESS OF HARVARD
OR HARVARD'S BUYER, ASSIGNEE
OR TRANSFEREE]

Ladies and Gentlemen:

This Estoppel Certificate is delivered to you pursuant to Section 13(b) of the Restated Utilities Contract, dated as of October 31, 1997, by and between President and Fellows of Harvard College ("Harvard") and the undersigned (the "User") (the "Restated Utilities Contract").

THE USER HEREBY CERTIFIES FOR THE BENEFIT OF [HARVARD OR THE BUYER, ASSIGNEE OR TRANSFEREE] THAT, as of the date hereof:

(a) The Restated Utilities Contract is in full force and effect and no default exists thereunder; and

(b) The Restated Utilities Contract is not subject to termination by the undersigned as a result of the transfer of the Restated Utilities Contract to [HARVARD OR THE BUYER, ASSIGNEE OR TRANSFEREE].

IN WITNESS WHEREOF, the undersigned has executed and delivered this Estoppel Certificate under seal as of the date first written above.

[NAME OF USER]

By: _____
Name:
Title:

Appendix I

FORM OF GENERAL RELEASE

[NAME OF USER]
Release Agreement

This RELEASE AGREEMENT (this "Release"), dated as of _____, 1998, is issued by _____ (the "User") in favor of President and Fellows of Harvard College ("Harvard") and Cogeneration Management Company, Inc. ("CMC").

W I T N E S S E T H

WHEREAS, the User and Harvard have entered into that certain Utilities Contract, dated as of October 1, 1980, whereby Harvard provides steam, electricity and chilled water to certain facilities owned and operated by the User (collectively, the "Facility"), which Utilities Contract has been amended by (i) the First Amendment, dated as of _____, 1983, by and between Harvard and the User (the "First Amendment"), (ii) the Second Amendment, dated as of _____, 1991, by and between Harvard and the User (the "Second Amendment"), and (iii) the Third Amendment, dated as of October 31, 1997, by and between Harvard and the User (the "Third Amendment"), and which Utilities Contract (as so amended) has been restated pursuant to the Restated Utilities Contract, dated as of October 31, 1997, by and between Harvard and the User (the "Restated Utilities Contract"; the aforementioned contract, as amended by the First Amendment, the Second Amendment, and the Third Amendment, and as so restated, shall hereinafter be referred to as the "Utilities Contract");

WHEREAS, the User and Cogeneration Management Company ("CMC") have entered into that certain letter agreement, dated as of [_____, 1987], whereby the User appointed CMC as its agent for purposes of obtaining from Boston Edison Company back-up power for distribution to the Facility (the "Agency Letter Agreement");

WHEREAS, the User and Harvard have entered into that certain letter agreement, dated as of November 1, 1997, whereby Harvard and the User have agreed to share

certain savings as set forth therein (the "Shared Savings Agreement").

WHEREAS, Harvard, Medical Area Total Energy Plant, Inc. ("MATEP"), and [Name of Transferee] (the "Transferee") have agreed, on certain terms and conditions, that Harvard will sell, assign, or transfer to the Transferee Harvard's direct or indirect interest in MATEP or the Plant and will assign to the Transferee all of its interest under the Utilities Contract, or will sell, assign or transfer to the Transferee the revenues from, and the obligation to operate, the Plant;

WHEREAS, Section 13.7 of the Third Amendment and Section 13(b) of the Restated Utilities Contract provides that, upon such sale, assignment or transfer, and as an inducement to Harvard to execute and deliver the Third Amendment and the Restated Utilities Contract, the User shall execute and deliver to Harvard a general release of Harvard and CMC from any and all liability arising on and after the date hereof out of or in connection with the Utilities Contract, the Agency Letter Agreement and the Shared Savings Agreement; and

WHEREAS, the User has benefitted and will benefit from the Third Amendment and the Restated Utilities Contract, and desires to execute and deliver such general release to Harvard.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned hereby agrees as follows:

1. Effective as of the date hereof, the User hereby unconditionally and irrevocably releases, remises, acquits and forever discharges Harvard and CMC from and against the Claims (as hereinafter defined), and waives all rights it may now or in the future have with respect to any of the Claims.

For purposes of this Release, "Claims" means any and all manner of liabilities, obligations, causes of action in law or equity, complaints, actions, demands, suits, debts, dues, judgments, executions, costs, expenses and other claims of any and every kind, arising under any theory of contract, tort, fraud, breach of duty, strict liability, or any other theory of liabil-

ity, based on any federal, state, or local law, code, statute, rule, or regulation or the common or civil law of any jurisdiction, known or unknown, fixed or contingent, suspected or unsuspected, or latent, concealed, or hidden, that the User or any of its successors or assigns will have against Harvard or CMC (i) arising or accruing on or after the date hereof, and (ii) relating to the Utilities Contract, the Agency Letter Agreement, the Shared Savings Agreement, or the generation, transmission, distribution, sale or use of electricity, steam, or chilled water provided by Harvard for use at the Facility.

2. The User hereby waives any and all rights and benefits which it otherwise now has, or in the future may have, under the terms of any rule of law or provision of statute or code which generally provides that a general release does not extend to claims which are unknown, unanticipated or undisclosed to a creditor on the date of such general release.

3. (a) The User represents and warrants that in executing and entering into this Release, it is not relying and has not relied upon any representation, warranty, promise, or statement made by anyone which is not recited, contained or embodied in this Release. The User understands and expressly assumes the risk that any fact not recited, contained, or embodied herein may turn out hereafter to be other than, different from, or contrary to the facts now known to it or believed by it to be true. Nevertheless, the User intends by this Release, and with the advice of its own independently selected counsel, to release fully, finally and forever all Claims and to agree that this Release shall be effective in all respects notwithstanding any such difference in facts, and shall not be subject to termination, modification or rescission by reason of any such difference in facts.

(b) The User represents and warrants that it has not heretofore assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any Claim. The User hereby agrees to indemnify and to hold harmless Harvard and CMC against any claim, contention, demand, cause of action, obligation, or liability of any nature, character or description whatsoever, including the payment of reasonable attorneys' fees and costs actually incurred, whether or not litigation is commenced, which may be based upon or which may arise out of, or in connection

with, any such assignment or transfer or purported assignment or transfer of any Claim.

(c) The User hereby represents and warrants to Harvard that it has full power, right, and authority to execute, deliver, and perform this Release.

4. This Release constitutes the entire understanding of the User, Harvard and CMC concerning the subject matter hereof. All prior discussions and negotiations with respect to the subject matter hereof are superseded by this Release.

5. This Release is not intended to be and shall not be deemed, construed or treated in any respect as an admission of liability by any person or entity for any purpose.

6. This Release may not be modified or terminated orally and no modification, termination or waiver hereunder shall be valid unless in writing and signed by the person whose rights or obligations are purported to be modified or whose rights are purported to be terminated or waived.

7. This Release shall be binding upon the User, and shall be for the benefit of Harvard and CMC, and each of their respective successors, assigns, shareholders, parents, subsidiaries, agents, affiliates, officers, directors, members of the governing board, employees, controlling persons, representatives, administrators, and agents, if any, and all parties acting by, through, under or in concert with each of them, past or present (other than, in each case, MATEP and Transferee).

8. Any provision of this Release which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

9. THIS RELEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS FOR ALL PURPOSES, INCLUDING BOTH CONSTRUCTION AND REMEDY, WITHOUT REGARD TO CHOICE OF LAW RULES. VENUE FOR ANY COURT ACTION ARISING FROM, RELATING TO, OR

TO ENFORCE ANY TERM OR PROVISION HEREOF, SHALL LIE EXCLUSIVELY IN BOSTON, MASSACHUSETTS.

10. EACH OF THE USER, HARVARD, AND CMC HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS RELEASE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS RELEASE, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE USER, HARVARD, AND CMC HEREBY WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS OR MODIFICATIONS TO THIS RELEASE. IN THE EVENT OF LITIGATION, THIS RELEASE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11. This Release may be executed in two or more counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same instrument. This Release may be delivered by facsimile transmission.

IN WITNESS WHEREOF, the User has executed and delivered this Release under seal as of the date first written above.

[USER]

By: _____
Name:
Title:

Acknowledged and Agreed:

President and Fellows of
Harvard College

By: _____
Name:
Title:

Cogeneration Management Company, Inc.

By: _____
Name:
Title:

Medical Area Total
Energy Plant, Inc.

By: _____
Name:
Title:

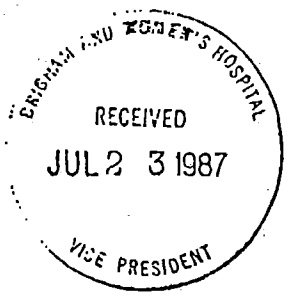
C M C

Cogeneration Management
Company, Inc.

Thomas E. Vautin
President

471 Brookline Avenue
Boston, Massachusetts 02215
617-732-8350

July 22, 1987



Mr. John Cupples
Vice President for
Administrative Services
Brigham & Women's Hospital
75 Francis Street
Boston, MA 02115

Dear Mr. Cupples:

As you know, Cogeneration Management Company (CMC) has completed the testing of the Medical Area Total Energy Plant (MATEP) and, since last December, has been proceeding with the final arrangements for electric power to Brigham & Women's Hospital and other Medical Area institutions.

Over the past many months we have been working with your technical staff to provide an improved electrical network to the Medical Area. The result will be an integrated power supply system which provides Brigham & Women's Hospital and each of the five other major institutions direct service from both MATEP and Boston Edison through separate underground distribution systems. We are very pleased to have collaborated with you and Boston Edison in this effort.

As a final step in accomplishing this project, CMC has negotiated contracts with Boston Edison to provide back-up power to the MATEP network. These agreements will enable MATEP to carry out its obligations for electric power supply and provide the necessary back-up power to the Plant. Because their distribution system is connected to the network at Brigham & Women's Hospital and the other five institutions, Boston Edison has requested that a contract be recorded for each location, with CMC signing as agent for each institution. We request that you sign this letter to appoint CMC as your agent for this purpose.

The proposed contract with Boston Edison describes the electrical network and the metering system and does not in any way supersede or alter the existing Utilities Contract between Brigham & Women's Hospital and Harvard. Furthermore, with respect to this agreement, CMC and MATEP agree to indemnify and hold Brigham & Women's Hospital harmless from any performance obligations or financial liabilities beyond those established under the Utilities Contract.

What all this means is that MATEP will be the energy supplier to Brigham & Women's Hospital and CMC will bill you for all electricity consumed. To the extent that Boston Edison supplies any back-up power, CMC will pay the cost of that power.

I would appreciate your signing the enclosed copy of this letter and returning it to me as soon as possible so that I may conclude the various agreements with Boston Edison. I thank you for your assistance.

Sincerely,
for Cogeneration Management Company, Inc.

The foregoing is hereby acknowledged
and agreed to this 7th day
of August, 1987.
for: Brigham & Women's Hospital

BOSTON **Edison** COMPANY

ELECTRIC SERVICE AGREEMENT

WORK ORDER NO. ______

NEW SERVICE ☐

Name Cogeneration Management Company, Inc., Agent for (Hospital)

Address 474 Brookline Avenue Town Boston

Business	Rate	Sales Representative

Change of Name From

Remarks The type of service to be supplied is 60 Hertz, 3 phase, 13.8kV primary metered. It is hereby agreed that distribution system ownership, operation and maintenance, including transformer(s) which are located beyond the primary metering point are the responsibility of the customer. It is further agreed that no stated or implied warranty will exist for any equipment beyond the primary metering point, that was purchased from the Boston Edison Company.

Credit Approved	Deposit

THE UNDERSIGNED, herein called the Customer, hereby applies for electric service at Hospital address Massachusetts, and agrees to use and pay for such service in accordance with the Company's Terms and Conditions and at the Company's Rate G-3 or other applicable rate as they exist from time to time and are filed with the Massachusetts Department of Public Utilities, and also, the Customer Engineering Requirements, if applicable.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXX~~ ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Appendix A, describing the metering arrangement, and Appendix B, describing payments by CMC for the installation of service, shall be incorporated herein and made part of this Agreement.

The Customer shall have the right at any time to change the Rate named above to any other Rate offered by the Company and applicable to his service as shown by the Company's Schedule of Rates in force at that time; provided, that the change of rate is not made in order to obtain such new rate for a period of less than one year; provided also, that the change shall not affect the minimum payment, if any, stated above; and provided further, that the Company has firm capacity to supply the Customer's requirements under such new rate.

This agreement is based on a line capacity of not more than the amounts listed in Appendix A, Total Demand Limitation, ~~XXXXXXXX~~ at any moment and shall take effect on such date after the Customer's Installation is connected to the Company's lines as he shall elect, but not later than November 1, 1987

Dated .... 198_

CUSTOMER

The foregoing application is hereby accepted

Boston Edison Company

By ....

Manager
Energy Services Dept.

Your Signature ....

Print Signature ....

Title ....

Form 688X
Revised 1/86

TERMS AND CONDITIONS

Applicable to all Rates for Electric Service

1. Applications for electric service and requests for discontinuance should be made at one of the Company's offices either by telephone, mail or personal call.
Date Effective: July 1, 1941

2. The supply of electric service is contingent upon the Company's ability to secure [illegible] the necessary locations for its poles, wires, conduits, cables and [illegible]. The [illegible] of service available at each location will be determined by the Company, and information relative thereto will be furnished by the Company on request.
Date Effective: July 1, 1941

3. Such wiring and other electrical equipment and apparatus as may be necessary in order to utilize the service shall be installed by the customer and shall comply with the [illegible] of the municipal authorities and the requirements of the Company in force from time to time. The Company's requirements will be furnished on request.
Date Effective: July 1, 1941

4. The applicant shall underwrite, guarantee or secure payment of minimum [illegible] the supply of service involves the use of investment which [illegible] not otherwise be warranted by the probable revenue to be obtained.
Date Effective: July [illegible] 1941

5. The Company may require a cash deposit (upon which the Company will pay interest [illegible] as provided by statute) or other guarantee satisfactory to the Company as [illegible] prompt payment of the customer's indebtedness to the Company.
Date Effective: July 1, 1941

6. The customer shall give the Company permission to enter his premises at all reasonable times for the purpose of installing, reading, inspecting, testing and [illegible] or for discontinuing service, or for removing any or all of its equipment used in connection with the supply of electricity, or for the purpose of obtaining the necessary [illegible] application of the rate or rates under which service is supplied.
Date Effective: July 1, 1941

7. (a) Such meters and accessory equipment as may be required to determine the quantity and rate of taking of electricity delivered shall be installed by the Company [illegible] provided and wired by the customer at points most convenient for the Company's service. [illegible] more than one set of meters is installed for a customer's service [illegible] each set of meters shall be billed separately unless the additional meters are installed for the Company's convenience. Where separate circuits and meters are required [illegible] supplying devices which may cause sudden or violent fluctuations in the voltage, the use registered on such meters shall be billed separately.
Date Effective: July 1, 1941

(b) Metering equipment for a customer will not be installed in series with the metering equipment of another customer except in buildings which have been wired [illegible] the effective date hereof and when the landlord in good faith notifies the Company that rewiring for the installation of multiple metering equipment would be impracticable [illegible] billing quantity (kilowatt hours) for the customer having the master metering equipment shall be the difference between the total quantity determined thereby and the sum of the quantities determined by the meters for customers installed in series with the master metering equipment, and the billing demand (kilowatts) for such customer having the master metering equipment shall be the same proportion of the demand determined thereby as the ratio of the said billing quantity to the said total quantity, unless such customer installs the necessary facilities for determining [illegible] whole or in part that portion of the demand attributable to his own use which is supplied through the master metering equipment. If such facilities provide for determining his demand only in part the remaining portion attributable to his use shall be prorated. In no case shall the billing demand be less than the minimum provided in the rate.
Date Effective: September 1, 1956

8. (a) All meters shall be read and bills rendered monthly except as provided in paragraph 8(b) and 8(c) and except in cases where access to the meter is not obtained on the regular reading date, or where for other reasons the company decides that a different billing period is required or desirable. If the Company is unable to obtain the reading of a meter, it may estimate the reading, but in no case shall estimated readings be used in computing bills for more than two successive billing periods, and when an actual reading is obtained, total charges for the period will be adjusted to correspond with actual consumption.
Date Effective: March 10, 1980

(b) A customer scheduled for bimonthly meter reading and billing shall have the option of reading the meter installed for his service and receiving a bill for the monthly period immediately succeeding the scheduled meter reading. If the customer elects so to read the meter and notifies the Company accordingly, the Company will furnish an appropriate form to be filled out by customer, who shall show thereon the reading of the meter on the date specified by the Company, and shall return such form to the Company within two days after such specified date. Upon receipt by the Company of the form correctly showing the required data, the Company will render a bill to the customer, according to such reading, for such monthly period; otherwise, the Company will read the meter and render bills at two-month intervals.
Date Effective: May 1, 1954

(c) A customer scheduled for bimonthly meter readings may, at the option of the Company, be rendered monthly bills. For the monthly period immediately succeeding the scheduled meter reading the bill may be based upon estimated readings, but in no case shall estimated readings be used for computing bills for more than two successive billing periods. When an actual reading is obtained, total charges for the period will be adjusted to correspond with actual consumption. Such customer shall have the option of reading the meters installed for his service and receiving a bill for the monthly period immediately succeeding the scheduled meter reading in the manner as described in paragraph 8(b).
Date Effective: March 10, 1980

9. (a) All bills shall be due and payable upon presentation.
Date Effective: July 1, 1941

(b) Bills rendered to non-residential customers on a monthly basis for which payment has not been received within 25 days from the date thereof shall bear interest at 1½% per month on any unpaid balance from the date thereof until the date of payment. Bills rendered to non-residential customers on a bimonthly basis for which payment has not been received within 55 days from the date thereof shall bear interest at the rate of 1½% per month on any unpaid balance from the date thereof until the date of payment.
Date Effective: February 19, 1975

10. The customer shall be responsible for all charges for service furnished him by the Company under the rates as filed from time to time with the Massachusetts Department of Public Utilities from the time service is started until it is finally discontinued; provided, that where service may be terminated by ten days' notice in writing, the customer who has given such notice will not be held responsible for charges for service furnished after the expiration of the ten-day period unless through fault or neglect of such customer the Company is unable to discontinue the service.
Date Effective: July 1, 1941

11. The Company shall have the right to discontinue its service on due notice and to remove its property from the premises in case the customer fails to pay any bill due the Company for such service, or fails to perform any of his obligations to the Company.
Date Effective: July 1, 1941

12. The benefits and obligations of furnishing and accepting service shall commence when the Company commences to supply electric service, and shall inure to and be binding upon the successors and assigns, survivors and executors or administrators (as the case may be) of the Company and customer, respectively.
Date Effective: July 1, 1941

13. The customer shall be responsible for all damage to, or loss of, the Company's property located upon his premises unless occasioned by circumstances beyond the customer's control. All equipment furnished by the Company shall remain its property.
Date Effective: July 1, 1941

14. The Company shall not be responsible for any failure to supply electric service, nor for interruption, reversal or abnormal voltage of the supply, if such failure, interruption, reversal or abnormal voltage is without willful default or gross negligence on its part. Whenever the integrity of the Company's system of the supply of electricity is threatened by conditions on its system or on the systems with which it is directly or indirectly interconnected, or whenever it is necessary or desirable to aid in the restoration of service, the Company may, in its sole judgment, curtail or interrupt electric service or reduce voltage to some or all of its customers and such curtailment, interruption or reduction shall not constitute willful default by the Company. The Company shall promptly, or as soon thereafter as feasible, report to the Department of Public Utilities each instance where the Company curtailed or interrupted electric service or reduced voltage to some or all of its customers for the reasons specified herein.
Date Effective: September 1, 1970

15. The Company reserves the right to install a load-limiting device arranged so as to disconnect the service in the premises if the rated capacity of the Company's service is exceeded.
Date Effective: July 1, 1941

16. The customer shall use the service with due regard to the effect of such use on the service to other customers of the Company, and in accordance with the requirements of the Company in force from time to time. The Company reserves the right to discontinue the service of any customer who, after proper notice from the Company, continues to use any equipment or apparatus that adversely affects the service of other customers. The customer shall maintain in proper condition all of his wiring and other electrical equipment and apparatus to which the Company's service is connected, and shall install and maintain such power factor corrective apparatus as may be necessary to comply with the Company's requirements applying to customers' alternating-current apparatus.
Date Effective: July 1, 1941

17. After the expiration of one year following the date upon which this provision becomes effective, electricity will not, without the approval of the Department of Public Utilities, be supplied by the Company to any customer of the Company for resale or redistribution by the customer to or for the use of others (whether or not the latter are tenants of the customer) if a specific charge or price, or a charge or price which varies with the quantity resold or redistributed, is made therefor by the customer, except
(1) to municipal light plants and to electric companies whose customers are located outside of the territory within which the Company distributes and sells electricity, or
(2) as provided in a special contract duly filed with the Department of Public Utilities in accordance with the provisions of Section 94 of Chapter 164 of the General Laws, or
(3) as lawfully directed and required by said Department in accordance with the provisions of Sections 92 and 92A of said Chapter
(4) at locations where electricity was so resold or redistributed on July 1, 1951, and where the customer has refused or failed to rewire the building or buildings concerned [illegible] installation of either series of multiple metering equipment. At such locations, one year after the effective date hereof and until satisfactory arrangements are made for such [illegible] metering and the Company is notified that electricity is no longer desired for purposes of resale or redistribution, the Company will charge for electricity as though there were as many individual meters installed at the General Rate A as there are tenants in the building, plus one for the building use, each of which meters showed the same demand and energy [illegible] which would be those shown on the master meter. If the customer refuses to furnish the exact number of tenants involved, the Company will substitute therefor its best estimate of the number of tenants involved.
Date Effective: September 1, 1955

[illegible] the Company shall stop its electricity from entering the premises of any customer for a failure to pay the amount due therefor as published in its Schedule of Electric Rates [illegible] [illegible]tment of Public Utilities, the customer as a condition precedent to the restoration of electric service may be required by the Company to pay the Company in advance a reconnection charge of $4.00 together with the Company's costs of sheriff's or constable's fees, if any, incurred pursuant to Section 116 of Chapter 164 of the General Laws (Ter. Ed.).
Date Effective: November 1, 1950

coincident demands measured in and out on the six MATEP supply lines, all such demands to be based on simultaneous 15 minute measurements; provided, that the monthly demand so calculated shall not be less than zero. The monthly demand calculation will be based on the 30 minute rolling average methodology used in the G-3 rate. A simplified diagram of the metering arrangement, together with a table showing the proposed method of calculating demands, is attached to this Appendix.

Energy Calculation

The monthly energy supplied by the Company shall be the sum of the monthly energy use of the six institutions, less the algebraic sum of the monthly energy measured on the six MATEP supply lines, but not less than zero.

Billing

All bills shall be rendered in the name of CMC, as agent for _____. For billing purposes, each of the six institutions shall be allocated any demand supplied by the Company in proportion to the amount of that institution's demand which is coincident with the maximum monthly total demand of the six institutions.

Each of the six institutions shall be allocated any energy supplied by the Company in proportion to each institution's share of total energy usage of the six institutions.

Total Demand Limitation

CMC agrees to restrict the total demand taken from the Company in order not to exceed 15,000 kw in the peak period, 20,000 in the summer off-peak, and 24,000 kw in the winter off peak.

Future Changes

This metering arrangement is experimental; in the event that it fails to measure properly the amount of demand and energy supplied by the Company to MATEP and the six institutions on the basis described above, the Company may bill on an estimated basis and CMC and the Company agree to meet to resolve the issues to the mutual satisfaction of the parties.

This agreement is subject to any applicable future rate changes ordered by the DPU.

Metering Costs

CMC agrees to pay the Company the additional one time charge of $5,000 to implement the above described metering arrangement. CMC also agrees to pay Boston Edison the additional sum of $50 per month for the processing and billing of the energy being supplied under this metering arrangement.

APPENDIX B

The costs of installation of the service to Harvard and the other five hospitals is estimated to be $898,531.25.

CMC has already paid $100,000, leaving a balance of $798,531.25. Upon execution of service agreements for all six hospitals, CMC shall pay this balance to the Company on behalf of the six hospitals.

EXHIBIT 5

2005 WL 1684081
Only the Westlaw citation is currently available.
Superior Court of Massachusetts.

BETH ISRAEL DEACONESS
MEDICAL CENTER, INC. [1]
v.
MATEP, LLC et al. [2]

No. 994530BLS.
|
June 16, 2005.

FINDINGS OF FACT, RULINGS OF LAW AND ORDERS FOR JUDGMENTS

ALLAN VAN GESTEL, Justice.

***1** On June 25, 2001, this Court allowed the several plaintiffs' cross motions for summary judgment, and on July 12, 2001, final judgments were entered in each of these consolidated cases declaring that: "Section 5(a)(ii) of the Restated Utilities Contract shall apply to both the Electricity Charge under Section 5(a)(i) and the Chilled Water Charge under Section 5(c)(i)." Full familiarity with those judgments and the memorandum explaining them is presumed.

The defendants, MATEP, LLC and Medical Area Total Energy Plant, Inc. (collectively, "MATEP"), through their current owners, are the operators of the Medical Area Total Energy Plant, an energy generating plant and distribution system that provides electricity, steam and chilled water to, among others, the plaintiffs in each of these five cases: Beth Israel Deaconess Medical Center, Inc.; The Brigham and Women's Hospital, Inc.; The Children's Hospital Corporation; Dana-Farber Cancer Institute, Inc.; and Joslin Diabetes Center, Inc. (collectively, the "plaintiffs" or "users"). The plaintiffs are all hospitals in Boston's Longwood Medical Area. In these findings, rulings and orders, the focus will be on the chilled water aspect of certain Restated Utilities Contracts ("RUCs"). [3]

Disagreement over the contract price for electricity resulted in these five identical lawsuits between the supplier, MATEP, and the several Boston hospitals the supplier served. As noted above, this Court concluded that the electricity pricing terms of the contracts unambiguously supported the hospitals' view of the proper contract price and entered summarily identical declaratory judgments in their favor. On MATEP's appeals, on February 27, 2004, the Appeals Court entered a Memorandum and Order Pursuant to its Rule 1:28, stating, among other things, that "[b]ecause we believe that the pricing terms are ambiguous, we reverse those portions of the judgments that concern chilled water pricing and remand the cases to the Superior Court for trial." [4]

Because the Appeals Court's decision came by way of its Rule 1:28, and is therefore not published, this Court will repeat in its findings, in somewhat abbreviated form, the facts as they were before this Court at the time of its prior rulings and before the Appeals Court on the appeals therefrom.

FINDINGS OF FACT

The MATEP plant was originally constructed and owned by Harvard University ("Harvard"). By the summer of 1997, Harvard was preparing to sell the facility. As a result, Harvard and the plaintiffs negotiated, and executed as of October 31, 1997, what was called the Third Amendment to the several original utilities contracts with the users. The purpose of the Third Amendment was, among other things, to address the impact of then-impending deregulation of the electricity market on the prices to be charged by the facility to the users for electricity under their contracts. Thereafter, in order to clarify the contract documentation after three amendments, the RUCs were prepared as well and executed "as of October 31, 1997."

***2** For many years prior to May 1998, Harvard, which did not create its own rate structure, sold electricity to the users at rates that were the same as those charged for similar services by the Boston Edison Company ("BECO"). BECO did not actually provide electricity to the users, nor did it collect therefor from them. Rather, its prices or tariffs were simply used as a reference standard by Harvard.

The Third Amendment made certain changes in the manner in which the users were to be charged for their electricity. Under it, the reference standard for the price of electricity could change from the BECO G-3 rate to the rate of alternative competitive suppliers of electricity upon the satisfaction of certain conditions.

While the Third Amendment was being negotiated between Harvard and the plaintiffs, Advanced Energy Systems, Inc.

("AES") was selected by Harvard as the likely purchaser of the MATEP facility. The plaintiffs in these cases, as users of the Harvard-run system, had certain approval rights regarding any sale of the facility by Harvard.

At the time leading up to the closing of the sale from Harvard to AES, it became known that PECO Energy Company ("PECO"), [5] which had not previously provided electricity in Massachusetts, had entered or was about to enter the market. Consequently, in the spring of 1998 the plaintiffs here, as users of the facility's electricity, requested that AES, as the future owner, agree to match the price and other terms offered by PECO to members participating in the Power Options Program. [6]

Under the Power Options Program, participants would remain customers of their local utility company from the date they entered into agreements with PECO until PECO converted their electricity accounts to service from it. This conversion would not occur until some time after a favorable resolution of a referendum on electric deregulation on the Massachusetts ballot in November 1998.

At a May 13, 1998, meeting, AES presented a draft letter agreement that, with minor changes, became the ultimate Letter Agreements of June 1, 1998. The essence of the Letter Agreements was that if electricity from PECO became "actually available" to certain designated hospitals listed in Exhibit B thereto that had signed on to receive electricity under agreements with PECO, Harvard and its successor would charge its users the same lower PECO rate for the period from June 1, 1998, through February 28, 2001.

The parties also agreed that, until April 1, 1999, the plaintiffs would pay MATEP the higher BECO rate for electricity, but that any excess over the PECO rate would be placed in an interest-bearing escrow account controlled by MATEP. The escrowed funds and any interest thereon would be returned to plaintiffs if electricity from PECO became "actually available" by April 1, 1999.

In a prior proceeding, this Court ruled that the conditions of the Letter Agreements had been met-i.e., PECO commenced delivery as required by April 1, 1999-and the plaintiffs became entitled to the return of the escrowed funds, which totaled more than five million dollars.

***3** The RUCs, in Section 5, contain methods for determining the amounts to be charged to the users for electricity, steam and chilled water.

Under the heading "Electricity," pertinent parts of Section 5(a) of the RUCs read in material part as follows:

> (i) During each month of the Term, the charge for Electricity ... shall be the dollar amount the User would have been required to pay to the Boston Edison Company had the User acquired its electricity from that source instead of from the Plant ... (For purposes of this subsection (a) and subsection (c) of this Section 5, references to Boston Edison Company shall include any corporate successor of that Company or any regulated public utility which takes over the business of providing electric service to the general public in the area served by the Plant) ...
>
> (ii) Consistent with the comparability principle set forth in Section 1(c), the "applicable rate schedule" described in section (a)(i) of this Section 5 shall be construed to mean the Boston Edison Company's "G-3" filed tariff (or if such tariff is no longer effective, the Successor tariff most closely approximating the "G-3" tariff); provided that:
>
> > (A) when a competitive market arises in which alternative supplies of electricity at comparable levels of service ... are actually available ... then
> >
> > (B) the new reference standard shall be the price ... of such alternative supplies ...
>
> (iii) Harvard and the User acknowledge that the provisions of subsection 5(a)(ii) ... do not change but only clarify the pricing terms agreed to by the parties in the Original Contract ... which pricing terms are set forth in subsection 5(a)(i) of this Restated Utilities Contract.

The "comparability principle" in section 1(c) referred to in (ii) above reads:

> Harvard and the User acknowledge that the Utilities to be provided pursuant to this Restated Utilities Contract are to be provided on the basis of pricing comparable to pricing available in a competitive market for levels of service comparable to that required to be provided by Harvard pursuant to this Restated Utilities

> Contract, all as more specifically provided in this Restated Utilities Contract.

The word "Utilities" as used in the RUCs is a defined term. It is said to mean "steam, electricity, or chilled water, individually or collectively, meeting the Specifications."

The RUCs also contain an integration clause, sec. 20(a), that reads:

> This Restated Utilities Contract shall be effective as of the date hereof and, from such date, shall supersede all prior agreements (including the Current Contract) and shall constitute a complete integration of the agreement between the parties with respect to the subject matter of this Restated Utilities Contract.

RUC sec. 20(b) requires that any changes to the RUC be made in writing.

As noted above, this Court in its March 20, 2001, memorandum ruled that a competitive market arose by April 1, 1999, when PECO commenced deliveries of electricity to six certain designated hospitals as contemplated by the Letter Agreements of June 1, 1998.

***4** The RUCs in Section 5, subpart (c), contain a method for pricing for chilled water. It is not possible to actually measure the amount of electricity used to chill the water, and, therefore, the charge is calculated in subsection (c)(i)(A) as follows:

> The additional dollar amount the User would have been required to pay to Boston Edison Company for electricity if, in addition to the electricity requirements actually taken from Boston Edison Company, or from the Plant, as the case may be, the User met its requirements for Chilled Water from User-owned electric chillers and auxiliary equipment which consumed one and one-quarter (1.25) kilowatt hour of electricity for each ton-hour of Chilled Water required ...

The overall chilled water charge therefore contained an electricity component along with several other components. The electricity component, though, was artificial. The electricity component of the chilled water price was simply a device for translating ton-hours of chilled water into kilowatt-hours of electricity so that a portion of the chilled water price could be derived from an electricity tariff.

The dispute between the parties relates to the question of whether the reference standard for electricity charged for chilled water should be the same as the reference standard for electricity charged for all other uses. The plaintiffs say yes: the PECO competitive rate should be substituted for that of BECO as the reference standard. MATEP says no: "chilled water" is treated separately from "electricity," and nothing in the RUCs regarding chilled water provides for anything other than a BECO reference standard.

The Appeals Court in its memorandum stated that "it is not clear that a competitive market for electricity should have any impact at all on the price MATEP was permitted to charge for chilled water." The Appeals Court thus said: "Even if extrinsic evidence is properly considered, extrinsic evidence is met by extrinsic evidence and yields no clear answer to the ... central question."

The Appeals Court concluded its memorandum with the following:

> In sum, the RUC is ambiguous on the question whether the parties agreed that the competitive PECO electricity price was to be used in calculating the price for chilled water. Consequently, proper interpretation of the relevant RUC provisions is a question of fact. In each of the cases before [the Appeals Court], paragraph 3 of the judgment is reversed, and the matter is remanded to the Superior Court

> for further proceedings consistent with this memorandum and order.

What follows are findings resulting from those further proceedings.

Harvard financed the construction of the MATEP facility, in part, by using the proceeds from approximately $300 million worth of tax-exempt bonds issued by HEFA.

The original Utilities Contracts were executed between Harvard and the user hospitals on October 1, 1980. These contracts set a single price for electricity, whether used to chill water or for any other purpose. The charge for chilled water, included in sec. 5(c), was based on certain negotiated capital and operations costs, plus a charge for the electricity used to chill the water. The electricity component was calculated by multiplying the average amount of electricity that it would take to chill one ton of water by the amount of chilled water actually provided to the user hospitals.

***5** Originally, both secs. 5(a) (for electricity) and 5(c) (for chilled water) used identical language: "The dollar amount the User would have been required to pay to the Boston Edison Company ..." Additionally, in sec. 5(a) there was additional language reading:

> For purposes of this subsection (a) and subsection (c) of this Section 5, references to Boston Edison Company will include any corporate successor of that Company or any regulated public utility that takes over the business of providing electricity service to the general public in the area served by the Plant.

The purpose of the Third Amendment was to address the impact of the then-impending deregulation of the Massachusetts electricity market on the prices to be charged by MATEP to the user hospitals for electricity under their contracts.

Additionally, the Third Amendment was to prepare for Harvard's anticipated sale of the MATEP facility. Harvard and the user hospitals wanted to make sure that the Third Amendment include certain step-in rights and performance standards that the new facility owner would have to satisfy.

The Third Amendment was negotiated on behalf of Harvard by MATEP's then president, Thomas Vautin ("Mr.Vautin") and MATEP's counsel, Frank Shaw ("Mr.Shaw") of Skadden Arps Slate Meagher & Flom, LLP. A consortium of user institutions known as MASCO, through its president, Rick Shea ("Mr.Shea"), and its attorney, Andrew H. Cohn ("Mr.Cohn") of Hale and Dorr, LLP, negotiated on behalf of the user hospitals. All parties and their counsel were sophisticated about the matter at hand.

On March 12, 1997, in anticipation of drafting the Third Amendment, Mr. Cohn prepared a memorandum from the user hospitals to Mr. Vautin, setting forth issues and parameters that the users wanted addressed. In connection with the impending deregulation of the electricity market, Mr. Cohn wrote:

> The parties acknowledge that the basic principles remain the same. The user institutions should pay electrical costs comparable to other similar institutional and/or commercial users [and] the rate paid by the user institutions for chilled water should be the comparable cost of electricity plus an already negotiated capital cost. In sum, the rates payable by the user institutions should not be more than comparable rates the institutions would pay in an open market.

Sec. 5.1 of the Third Amendment re-designated sec. 5(a) of the original Utilities Contracts as "5(a)(i)" and added a subsection 5(a)(ii). Subsection 5(a)(ii) provided that if cheaper alternative supplies of electricity became available on comparable terms, the rates for those alternative supplies would be the new reference prices for electricity under the contracts.

From the beginning of the negotiations, Harvard expressed its concerns that changes to the language of the Utilities Contracts made by the Third Amendment might inadvertently trigger repayment of the tax-exempt bonds that Harvard

utilized when it originally built the MATEP facility. On June 26, 1997, Mr. Vautin wrote Mr. Shea, informing him that some of the proposed language of the Third Amendment was problematic because it might require Harvard to repay some of the bonds. Mr. Vautin said: "As we have made clear in each of our meetings on this matter, it is essential that any modifications to the Utilities Contracts not be pricing changes which would cause Harvard difficulty with respect to the HEFA bonds."

***6** This concern about the bonds was stated by Mr. Shaw as well. He advised Mr. Cohn that Harvard and its bond counsel wanted to be certain that the Third Amendment would not inadvertently trigger repayment obligations imposed on a tax-free bond transaction by the Internal Revenue Service ("IRS").

Harvard expected to use the proceeds from the sale of the MATEP facility to repay an equivalent amount of HEFA bonds. However, Harvard did not want to be forced by the IRS to pay off the remaining bonds. That remaining amount was approximately $150 million.

The solution was for Harvard to take the position that the purpose of the Third Amendment was to clarify a number of provisions, but not to change the pricing structure that had been set forth in the original Utilities Contracts. The user hospitals agreed to this.

Mr. Cohn spoke directly with Harvard's bond counsel at Palmer & Dodge. According to bond counsel, if the IRS perceived that modifications to the Utilities Contracts conferred any benefits on Harvard beyond the MATEP facility sale price, the IRS might claim that Harvard was obligated to repay the remaining bonds.

Mr. Cohn told Harvard's bond counsel that the Third Amendment would not change the pricing structure, and the user hospitals would continue to pay the market price. In explaining this to bond counsel, Mr. Cohn stated that prior to electricity deregulation, there was a monopolistic regulated market consisting only of BECO. After deregulation, the market might expand to include other suppliers, but the market price principle would remain, and the user hospitals would pay whatever the market price was as a result of the competition of new suppliers.

The language finally agreed upon was added to sec. 5(a)(ii). It reads: "When a competitive market arises in which alternative suppliers of electricity are actually available ... the new reference standard shall be the price ... of such alternative supplies ..."

A slightly different form of this language was put into sec. 5(a)(iii) of the Third Amendment. It reads: "Harvard and the Users acknowledge that the provisions of subsection 5(a)(ii) of this Utilities Contract do not change but only clarify the pricing terms of this Utilities Contract from the pricing terms agreed to by the parties in the Current Contract."

At no time during the negotiations leading to the Third Amendment did Mr. Vautin or Mr. Shaw, or any other Harvard representative, ever suggest that the reference price for the electricity component of chilled water would be different from the price for other electricity. Nor, apparently, was there ever a statement by or on behalf of Harvard that all electricity pricing should be the same. In short, Harvard apparently did not speak to the issue one way or the other, its focus being on the concern about triggering adverse tax consequences on its HEFA bonds.

The negotiations of the Third Amendment ended, and it was executed on October 31, 1997.

***7** Because the underlying Utilities Contracts had been amended twice before, with the Third Amendment, whenever contract questions arose, the parties would be forced to review four lengthy documents-the original contracts and each of the three amendments. It was to simplify that process and to eliminate gaps and inconsistencies in the documents that Harvard and the user hospitals agreed to prepare and execute, prior to the sale of MATEP, the RUCs. The purpose of the RUCs was not to enter into yet another contract but rather to have a single frame of reference for the parties' relationship.

The following quotations from two of the "WHEREAS" clauses of the RUCs illustrate their stated purpose:

> WHEREAS, Harvard, for its own use and the use of certain nonprofit hospitals and clinics with a teaching and research affiliation with Harvard ... has undertaken the development and construction of a total energy plant and related distribution system ... The primary purpose of the Plant is to replace an obsolete energy plant and to supply all the electricity, steam, and chilled water needs of the Harvard Medical School, Dental School and School of Public Health and those facilities of the Hospitals and Clinics which are located in the same geographic area of

> Boston. The Plant was designed to meet such needs as estimated by Harvard and the Hospitals and Clinics;
>
> ---
>
> WHEREAS, the parties wish to restate in a single agreement the terms and conditions upon which the User and the other Current Users ... agree to take and pay for their electricity, steam and chilled water requirements from the Plant and the terms and conditions upon which Harvard agrees to cause the Plant to be operated to supply such requirements, by incorporating into this Restated Utilities Contract the Original Contract, the First Amendment, the Second Amendment, and the Third Amendment, and further desire to correct the definition of the term "CPI" in the Third Amendment to correct a mutual mistake of the parties with respect to this definition;
>
> NOW THEREFORE, ... the parties hereto agree as follows: [after which follows 42 pages of single space text, two schedules and appendices A through I.]

On March 31, 1998, Mr. Shaw sent to Mr. Cohn a memorandum and a draft of the RUC confirming that the Third Amendment was being restated in the RUCs and that there would be no substantive changes.

On April 24, 1998, Mr. Cohn wrote Mr. Shaw, stating: "As we previously agreed, the purpose of the Restated Utilities Contract was to make certain that the cross-references from all of the amendments were regularized." Also included in his letter was the following:

> The Third Amendment transformed old Section 5(a) of the Contract to Section 5(a)(i) and added a new subsection (ii). Old Section 5(a) clearly stated that the electricity charge (as reflected by reference to "Boston Edison Company") would be applicable "For purposes of this subsection (a) and *subsection* (c) of this Section 5."

***8** (Emphasis in original.)

Mr. Shaw proposed that, since the original cross-connection to sec. 5(c) had been in sec. 5(a), the parties should add some further language to that subsection and should avoid making any changes to still another part of the contract. The concern over triggering the bond payments arose again in this context. The language proposed by Mr. Shaw, which became the language of the RUCs, was to append an additional phrase to subsection 5(a)(i), reading:

> Harvard and the User acknowledge that the provisions of subsection 5(a)(ii) of this Restated Utilities Contract do not change but only clarify the pricing terms agreed to by the parties in the Original Contract ... which pricing terms are set forth in subsection 5(a)(i) of this Restated Utilities Contract.

Mr. Shea, the user hospitals' principal negotiator for the Third Amendment and the RUCs, testified that the users had to give their consent before Harvard could sell the MATEP facility. He further testified that the user hospitals would not have given that consent unless they had assurances that chilled water would be treated the same as it had been for the first 18 years.

Only Harvard and the user hospitals were involved in the negotiation and drafting of the RUCs. Whatever may have occurred at that time between Harvard and AES, there was no contact between the user hospitals and AES. Nor was any information regarding electricity pricing in the RUCs transmitted from AES to the user hospitals by Harvard.

In the spring of 1998, PECO came on the scene in the Massachusetts energy market. During this same period, Harvard was finalizing its negotiations with AES for the sale of the MATEP facility. The user hospitals then asked AES, as the future owner, to agree to match the prices and other terms offered by PECO to members participating in the Power Options Program. As noted above, the Power Options Program was created by HEFA to secure electricity supplies for its member institutions following deregulation in the electric industry.

Also as recited above, during May 1998, the user hospitals and AES negotiated what became the June 1, 1998 Letter Agreements (the "PECO Letter"). These negotiations took place after the RUC negotiations had been completed and all pricing matters therein had been resolved.

Four meetings took place between AES and the user hospitals. The principal topic of discussion was whether PECO should be a reference price and how to determine whether electricity

had become "actually available" so as to satisfy the condition for the PECO pricing agreement.

Mr. Shea, on behalf of the user hospitals, testified that at the three meetings he attended with AES, the subject of chilled water pricing was neither discussed nor even brought up by anyone. Mr. Cohn and Mr. Vautin, who attended all four meetings, said the same thing. So also did a man named Mr. Schorr, MASCO's former chairman and a participant in the negotiations of the Third Amendment, the RUCs and the PECO Letter.

***9** At a May 13, 1998 meeting, AES's counsel, David Balabon ("Mr.Balabon"), presented a draft letter agreement that, with minor changes, became the June 1, 1998 Letter Agreements. This letter agreement made no reference to chilled water. What it did provide was that under the terms of the RUCs, if electricity from PECO became "actually available," then AES would charge the user hospitals the lower PECO rate for electricity.

AES became the owner of the MATEP facility in June of 1998. In its very first billings to the user hospitals after the acquisition, AES charged the PECO rate for electricity sold by it-not, PECO-and the higher BECO rate for the electricity component of chilled water.

The user hospitals objected immediately. For the next several months attempts were made to resolve the issue. Those attempts failed, and these cases followed.

RULINGS OF LAW

In other litigation before this Court between Harvard and PECO, the Appeals Court also found ambiguity in an agreement and "remanded to the Superior Court for further proceedings consistent with" its opinion. *President and Fellows of Harvard College v. PECO Energy Company,* 57 Mass.App.Ct. 888, 896-97 (2003). Although the situation was not the same in all respects, the Appeals Court's rulings in *PECO* provide some guidance here. At pp. 895-96 it said:

> Neither party's interpretation of the contracts commends itself to us to the exclusion of the other. We therefore conclude that the agreements by themselves do not reveal an answer to the question at issue, if indeed there is one. This is the essence of ambiguity. Contract language is ambiguous "where the phraseology can support reasonable differences of opinion as to the meaning of the words employed and the obligations undertaken." ... Once a contract is determined to be ambiguous, the court is free to look to extrinsic evidence ... in order to give a reasonable construction in light of the intentions of the parties at the time of the formation of the contract ... When such evidence is considered, it may be that a logical answer consistent with the purposes of the agreements and the intentions of the parties will emerge.

The Court will first assess the extrinsic evidence heard on remand to determine whether, "[w]hen such evidence is considered, ... a logical answer consistent with the purposes of the agreements and the intentions of the parties will emerge." In doing so, the Court, as instructed in *PECO,* will attempt to "give a reasonable construction in light of the intentions of the parties at the time of the formation of the contract," both at its outset in 1980 and again at the time of execution of the RUCs in 1998.

Even if an answer is found at those two times, particularly at the time of execution of the RUCs in 1998, the Court will nevertheless also make rulings as if no answer was proven. In doing so, the Court wants a full record in the event of another appeal so as to avoid yet another remand. The Court when making those latter rulings will "apply a term which comports with community standards of fairness and policy rather than analyze a hypothetical model of the bargaining process."

***10** At the outset of these rulings, the Court believes it significant to focus on the fact that, except for the PECO Letter Agreements, the parties to the agreements being examined were Harvard and the user hospitals. It is their intentions that must be uncovered or found absent, not those of the purchaser of MATEP 18 years, or even a few months, later. As a successor to agreements entered into by a predecessor, AES must play a greatly diminished role, if any at all, in the search for intentions. About all AES can do, as it has done here, is give its view of how it would like, and expect, the agreements to be read.

The intentions of the user hospitals, to the extent they had any at the time of executing the agreements in 1980, were to purchase electricity, steam and chilled water at the most cost effective market rate that would provide the necessary services and supply for those important entities. BECO provided the only market price then available in the Massachusetts regulated market.

Harvard's position is essentially unexpressed, except of course in the two WHEREAS clauses included in the findings above. However, as a non-profit university-provider to some of its own teaching hospitals, and also to its own Medical School, Dental School and School of Public Health, it is not unreasonable to infer that Harvard's intentions were no different than the users. See, e.g., *Rolanti v. Boston Edison Corp.*, 33 Mass.App.Ct. 516, 522 (1992). At least, no party came forward with any evidence to the contrary.

As between electricity and chilled water, for the entire period from 1980 to 1998, there was a single regulated market for electricity-BECO-and no market for chilled water. It is not surprising, then, that for those 18 years for both the electricity actually purchased by the user hospitals, and for the electricity component for the chilled water, the parties agreed to and accepted BECO's rate as the reference.

The fact that there was a market for electricity but not for chilled water in the circumstances here is of negligible significance. As AES argues, and the Appeals Court observed, when dealing with chilled water, there is no market to establish a price. Conversely, when dealing with electricity, there has always been a market-for the first 18 years BECO and, thereafter, unregulated. But both the price for electricity purchased and the price for the electricity component of the chilled water purchased by the user hospitals presented artificiality. In neither instance did the user hospitals actually purchase electricity from BECO. Nor, after PECO came into the market, did the user hospitals actually purchase electricity from PECO either. In both instances, and at all times, the price charged for electricity and the price charged for the electricity component for chilled water were assumed to be the tariff-authorized charges of BECO, or of PECO when it arrived later. No one knows, because there was never any evidence thereof, what the price charged for electricity by MATEP would have been if it, like BECO and PECO, had its own established rates.

***11** With only one exception, there was utterly no evidence presented to this Court about the financial operation of MATEP at any time since its opening in 1980. As a result, this Court has no knowledge whatsoever as to whether MATEP ever made money, lost money or broke even in selling electricity to the user hospitals at either the BECO or the PECO rates. Nor does this Court have any knowledge whatsoever as to whether MATEP ever made money, lost money or broke even in selling chilled water to the user hospitals with an electricity component at either the BECO or the PECO rates.

The one exception to the economics of the MATEP plant came in an effort by AES to demonstrate why it should not be saddled with the PECO rates for the electricity component of chilled water. AES pointed to "peak load" requirements that sometimes occur in heat spells in the summer. According to AES, the MATEP facility, at peak load times, cannot produce enough electricity for the user hospitals. In those circumstances, AES says it has to purchase additional electricity from BECO, at BECO rates, and sell it in turn to the user hospitals at the lower PECO rates. On analysis, this argument fails.

The reader is asked to recall the earlier argument from AES that the electricity component of chilled water is artificial. AES says this because not all chillers of water are powered by electricity. Indeed, AES claims that MATEP "had other types of chillers than electric chillers." For example, AES provided evidence that "chilled water in the MATEP facility is made from oil and gas and it's made from steam, and it's made from electricity. It's a very complicated process." Taking MATEP at its word, the suggestion that it would be unfair to force it to buy higher priced electricity to attend to peak load problems when dealing with the "artificial" electricity component of chilled water falls flat on its face. By AES's own evidence, BECO's electricity is not in any significant way shown to be used to chill the water. Rather, BECO's extra electricity in peak load times is supplied to the user hospitals directly as electricity at what even AES concedes is now contractually mandated PECO rates.

Basically, the Court is left with the question of whether the parties who negotiated and executed the Third Amendment and the RUCs intended that, although for the first 18 years of their relationship the BECO price was the reference for all electricity charges, after deregulation of the electricity market, the electricity component of chilled water would remain referenced to BECO, but the electricity charge for electricity would be referenced at the new deregulated market rate.

As this Court ruled in the matters appealed, interpretation of an unambiguous agreement is an issue of law for the Court. *Lumbermans Mut. Cas. Co. v. Zoltek Corp.*, 419 Mass. 704, 707 (1995). Contract language must be construed in its usual and ordinary sense. *116 Commonwealth*

Condominium Trust v. Aetna Cas. & Surety Co., 433 Mass. 373, 376 (2001); *Citation Ins. Co. v. Gomez*, 426 Mass. 379, 381 (1998). However, here the Appeals Court has told this Court that there is ambiguity, and this Court is bound by that decision.

***12** When an element of ambiguity does appear in a contract, the Court must, among other things, consider the entire instrument and the general scheme it reveals to determine the significance and meaning of the ambiguous terms. *MacDonald v. Gough*, 326 Mass. 93, 96 (1950). "The object of the court is to construe the contract as a whole, in a reasonable and practical way, consistent with its language, background and purpose." *USM Corp. v. Arthur D. Little Systems, Inc.*, 28 Mass.App.Ct. 108, 116 (1989). The Court must act in a way to give effect to the agreement as a rational business instrument in order to carry out the intent of the parties. *Starr v. Fordham*, 420 Mass. 178, 192 (1990). Even in the case of an ambiguous agreement, interpretation is a matter of law for the Court except insofar as it may turn on facts in genuine dispute. *Gross v. Prudential Ins. Co. of America, Inc.*, 48 Mass.App.Ct. 115, 119 (1999).

Justice, common sense and the probable intention of the parties upon consideration of the words in question are guides to the construction of a written contract. *City of Haverhill v. George Brox, Inc.*, 47 Mass.App.Ct. 717, 720 (1999).

In construing the RUCs here, the Court must give effect to the intentions of the parties, as expressed in the language employed, considered in the light of the context of the transaction and the purposes to be accomplished. *Starr v. Fordham*, 420 Mass. 178, 190 (1995); *Shea v. Bay State Gas Co.*, 383 Mass. 218, 224-25 (1981).

The parties here prepared and executed the RUCs with an 18-year history of operation in a regulated electricity market, but against the backdrop of the impact of impending deregulation. Nothing could be more clear from the user hospitals' point of view than that they wanted to benefit from any lowering of electricity prices in a deregulated market. If a competitive market opened up-as it did when PECO arrived-then the users wanted the reference standard for electricity pricing to be no longer BECO's rates but, rather, the pricing in the competitive market.

Harvard, the party on the other side of the Third Amendment and the RUCs, did not really indicate during negotiations whether it agreed with the user hospitals on the electricity pricing point. Harvard seemed more focused on not triggering a substantial payment on its HEFA bonds. But, while Harvard may not have indicated its position on the electricity pricing to be in tandem with the user hospitals, it certainly did or said nothing to indicate that it took AES's position that there should be two different electricity reference prices: PECO for what was sold as electricity, and BECO for what was the electricity component of the chilled water.

In the original utilities contracts dated as of October 1, 1980, what now is in the RUCs as subsections 5(a)(i) through 5(a)(iii) was all included in a single section 5(a). The original single section 5 specifically linked subsection (a) covering "electricity" with subsection (c) covering "chilled water" with regard to BECO price references. The Court again reads this language, in the overall context, as implying that the reference standard was to be the same for both.

***13** Further, as noted above, subsection 5(a)(iii) of the RUCs recites that the provisions of subsection 5(a)(ii) "do not change but only clarify the pricing terms agreed to by the parties in the Original Contract ... which pricing terms are set forth in subsection 5(a)(i)" of these RUCs. The Court also again reads this language as continuing the tie between the electricity section and the chilled water section for purposes of employing the BECO reference standard rates or any subsequent competitive market rates such as those of PECO here.

The extrinsic evidence presented at the recent hearing does not detract from this Court's conclusions. Instead it adds support therefor.

Construing "the contract as a whole, in a reasonable and practical way, consistent with its language, background and purpose," *USM Corp. supra*, 28 Mass.App.Ct. at 116, and acting "in a way to give effect to the agreement as a rational business instrument in order to carry out the intent of the parties," *Starr, supra*, 420 Mass. at 192, this Court cannot conclude that the contracting parties intended two separate references for electricity pricing when neither reference is anything more than a convenience in setting a market rate. As observed above, neither BECO nor PECO sold either electricity or chilled water to the user hospitals. MATEP was the only seller, but MATEP never established, or even attempted to establish, its own price for the electricity it sold or for the electricity component of the chilled water it sold.

It always accepted the market price established by others-first the regulated monopoly, BECO, and then the deregulated PECO. It makes no sense, as a rational business instrument, to have one artificial rate for 18 years and then, sub silentio, after there was deregulation change to two artificial rates that left the initial rate higher than that of the new market.

The RUCs, of course, cannot be read or interpreted without also considering the impact and objectives of the simultaneously executed June 1, 1998, Letter Agreements.

As this Court ruled before,

> [t]he gloss of the June 1, 1998, Letter Agreements that shines over the present situation is that the parties to the RUCs-then Harvard and the plaintiffs-wanted to change the reference standard for setting electricity rates from just those charged by the sole, monopoly electric utility [BECO], to those that might be charged by new entrants into a deregulated competitive market. Nothing, however, in the negotiations or discussions leading to the Letter Agreements, which were thoroughly tried before this Court in the evidentiary hearing in February.2001, or in the plain language of the Letter Agreements themselves suggests in any way that after a deregulated competitive market arrived, the users would pay based on a competitive rate reference standard for all electricity except that used to chill water, and use the old [BECO] reference standard for the latter.

Given the ambiguity found by the Appeals Court, this Court now has considered the extrinsic evidence. It determines that justice, common sense and the apparent intention of the contracting parties, assessed in a reasonable and practical way and designed to give effect to the RUCs as rational business instruments, requires an interpretation thereof such that the plaintiffs, as users of MATEP's electricity, be charged therefor using as a reference standard the PECO or market price for all electricity, including that for chilled water under section 5(c).

***14** All of the foregoing notwithstanding, an appellate court may yet again determine that this Court has not correctly assayed the extrinsic evidence. Because Harvard's position or intention on the chilled water pricing remains in the shadows, the ambiguity found by the Appeals Court may be seen as an unresolved question that the parties never considered. Certainly, there are cases in which it is apparent that only one party had a view or intention on a key issue and, in that circumstance, that one party's view cannot be imposed on the other. See, e.g., *First Safety Fund National Bank v. Friel,* 23 Mass.App.Ct. 583, 587-88 (1987). It is for this reason that the Court here will state its views following the instructions in *PECO, supra,* 57 Mass.App.Ct. at 896.

> We recognize, however, that this may be a question that the parties never considered. Should the trial court so determine, that does not frustrate a sensible resolution. "When the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court." ... In these circumstances, the court does not base a decision upon evidence of prior negotiations or agreements, although such evidence may be admitted as bearing on what may be reasonable ... "[W]here there is in fact no agreement, the court should apply a term which comports with community standards of fairness and policy rather than analyze a hypothetical model of the bargaining process."

Abjuring further efforts to "analyze a hypothetical model of the bargaining process," the Court will "apply a term which comports with community standards of fairness and policy." In doing so the Court, as instructed in *PECO,* will "not base a decision upon evidence of prior negotiations or agreements, although such evidence may be [considered] as bearing on what may be reasonable."

The setting is as follows:

Harvard, a non-profit institution, built a facility to generate electricity, steam and chilled water for sale to a small network of hospitals and related institutions, including its own Medical School, Dental School and the School of Public Health. At least some, if not all, of the hospitals were affiliated with Harvard as teaching facilities.

Among the items sold by Harvard was electricity that it generated at the MATEP facility. Harvard, however, did not establish its own price rate to charge its customers for the electricity it sold. Rather, for reasons not explained-perhaps for Harvard's own convenience-Harvard and the users agreed to use the BECO price for equivalent service as a reference or template for the price to be charged. This BECO price remained the sole reference for the first 18 years of the relationship between Harvard and the users.

The BECO reference price was used for those first 18 years for all electricity sold by Harvard to the users and for the electricity component of the chilled water Harvard sold.

***15** Two things occurred in the 1997-1998 time period: Harvard decided to sell the MATEP facility to AES; and the electricity market in Massachusetts was about to become deregulated. Deregulation could have the effect of providing for the sale of electricity at lower than BECO rates in the previously monopolistic BECO market.

The user hospitals, themselves non-profit institutions, understandably desired to have the same advantage as everyone else in being able to purchase their electricity and the electricity component of their chilled water at the best market rate for comparable service; thus the negotiation and adoption of the Third Amendment, the RUCs and the PECO Letter Agreements.

This Court, under those circumstances, cannot conceive of a construction of the RUCs "which comports with community standards of fairness and policy" that upon deregulation forces the user hospitals to pay to AES PECO's prices for electricity that it does not buy from PECO and to pay to AES BECO's prices for the electricity component of the chilled water that it does not buy from BECO. In short, if the ambiguity has not been resolved by the extrinsic evidence and the contracting parties "have not agreed with respect to a term which is essential to a determination of their rights and duties," then this Court rules that the RUCs should be construed such that sec. 5(a)(ii) of the RUCs shall apply to both the electricity charge under sec. 5(a)(i) and the chilled water charge under Section 5(c)(i). To rule differently seems utterly inconsistent with "community standards of fairness and policy."

ORDERS FOR JUDGMENTS

On the foregoing findings and rulings, judgments shall enter for the plaintiffs in each of the five consolidated cases declaring that sec. 5(a)(ii) of the RUCs shall apply to both the electricity charge under sec. 5(a)(i) and the chilled water charge under Section 5(c)(i), and the plaintiffs shall have their statutory costs of suit.

All Citations

Not Reported in N.E.2d, 2005 WL 1684081

Footnotes

1 The plaintiffs in four related cases are: The Brigham and Women's Hospital, Inc.; The Children's Hospital Corporation; Dana-Farber Cancer Institute, Inc.; and Joslin Diabetes Center, Inc. The defendants are the same in all cases.

2 Medical Area Total Energy Plant, Inc.

3 Each plaintiff hospital has its own RUC, the substance of which, for these purposes at least, is identical.

4 MATEP did not appeal from that part of this Court's judgments as related to the price for the purchase of electricity. Thus, only the price for the electricity component of chilled water is in issue here.

5 PECO did business in Massachusetts through a subsidiary, Horizon Energy, d/b/a Exelon Energy. These findings use "PECO" to refer to all three entities.

6 The Power Options Program was created by the Massachusetts Health and Education Facilities Authority ("HEFA"), and the program had as its purpose securing electricity supplies for its member institutions following deregulation of the electric industry.

End of Document

EXHIBIT 6

June 1 ~~May 29~~, 1998

Dorothy Puhy
Chief Financial Officer
Dana-Farber Cancer Institute, Inc.
44 Binney Street
Boston, MA 02115

Re: Restated Utilities Contract dated as of October 31, 1997

Dear Ms. Puhy:

This letter sets forth the agreement between you (the "User") and the undersigned (the "undersigned" or the "Company") regarding the electricity pricing terms of the above-referenced Restated Utilities Contract (the "Contract").

Section 5(a)(ii) of the Contract provides in relevant part that the electric energy component of the electricity price under the Contract shall be the price of alternative supplies of electricity "at comparable levels of service with specifications and reliability standards at least equal to those provided in this Restated Utilities Contract" which "are actually available".

The Company understands that PECO Energy Company ("PECO") has entered into an agreement with MHI, Inc., a wholly-owned subsidiary of the Massachusetts Health and Educational Facilities Authority ("HEFA"), pursuant to which PECO is offering to sell electricity to participating HEFA members on certain terms and conditions as set forth in a draft "Option 2 - Year Participant Agreement for the Sale and Purchase of Electricity" in the form attached to this letter agreement as Exhibit A (the "Two Year Agreement"). The Company further understands that you wish to have the Two Year Agreement form the basis for an agreement between us fixing the electric energy component of the electricity price provided for in the Contract, and the Company is willing to do so on the terms and conditions set forth herein.

For purposes of this letter agreement, references to "a majority of the Two Year Agreements" shall mean a majority of those Two Year Agreements set forth on Exhibit B. References to actions to be taken by all of the Users refers to the Users under the Restated Utilities Contracts between the undersigned and such Users listed on Exhibit C hereto.

The Company hereby agrees with you as follows:

1. The provisions of this letter agreement shall become effective on the date hereof and, except as otherwise provided herein, shall remain in effect until February 28, 2001 (the "Initial Term"), at which time this letter agreement shall terminate and be of no further force or effect. For the period

of time this letter agreement is in effect the terms herein shall constitute the new reference price under Section 5(a)(ii) of the Contract. Subject to Section 3.2, in the event that by April 1, 1999, either (i) the referendum petition (the "Referendum") to repeal Chapter 164 of the Acts of 1997 of Massachusetts (the "Restructuring Act") is not favorably resolved or is otherwise overturned and not reinstated, or it, or the restructuring settlement entered into by Boston Edison Company with the Massachusetts Attorney General and approved by the Massachusetts Department of Telecommunications and Energy (the "MDTE") is otherwise altered and as a result thereof a majority of the Two Year Agreements are terminated by either PECO or the HEFA members party thereto; or (ii) PECO has not commenced deliveries of electricity under a majority of the Two Year Agreements, then this letter agreement shall thereupon terminate and the amount in the escrow account provided for in Section 2.6 hereof shall be paid to the Company.

2. For the Initial Term of this letter agreement, the electric energy component of the electricity price under the Contract shall be calculated as follows (the "Contract Price").

2.1 Agreement Years 1 and 2:

Year 1: The Contract Price during each month of Agreement Year 1 shall be six percent (6%) less than the Benchmark Rate (as defined below) for the calendar year in which the applicable month falls.

Year 2: The Contract Price during each month of Agreement Year 2 shall be five percent (5%) less than the Benchmark Rate for the calendar year in which the applicable month falls.

2.2 Agreement Year 3: The Users hereby elect in advance to extend this Agreement for Agreement Year 3, subject to the right to revoke such election if at least thirty (30) days prior to the end of Agreement Year 2, the Users shall collectively notify the Company in writing of their election to terminate this Agreement as of the end of Agreement Year 2. The Contract Price during each month of Agreement Year 3 shall be five percent (5%) less than the Benchmark Rate for the calendar year in which the applicable month falls.

2.3 Benchmark Rates

As used herein, the term Benchmark Rate means the following rates during the corresponding calendar years:

1998: $0.02800/kWh

1999:	$0.03100/kWh
2000:	$0.03400/kWh
2001:	$0.03800/kWh

2.4 Agreement Years

For purposes of applying the percentage discounts from the Benchmark Rate, Agreement Year 1 will begin on June 1, 1998, and subsequent Agreement Years shall start on March 1 of each subsequent year.

2.5 Most Favored Customer

If PECO or any affiliate at any time is required to lower the contract price under a majority of the Two Year Agreement below the price in effect on the date of this letter agreement pursuant to Section 6.5 thereof, then the Company and the Users collectively shall negotiate an amendment to this letter agreement to incorporate such lower price and any related terms and conditions into the Contract Price and this letter agreement.

2.6 Escrow Account

During the period prior to the later of (i) favorable resolution of the Referendum and (ii) the date on which PECO has commenced deliveries of electricity under a majority of the Two Year Agreements, the User shall pay to the Company an amount equal to the Boston Edison Company Standard Offer Generation Service rate then in effect, and the Company shall pay into an escrow account an amount equal to the difference between the amount payable under this letter agreement and such Standard Offer Generation Service rate. Said escrow account shall be established by the Company and administered by a third party with terms and conditions mutually agreed upon by the User and the Company. Upon the later of (i) favorable resolution of the Referendum and (ii) the date on which PECO has commenced deliveries of electricity under a majority of the Two Year Agreements, and within forty days thereafter, any amounts in the escrow account shall be disbursed to the User, with interest thereon at the rate paid by the entity holding the escrowed funds. In the event of the termination of this letter agreement under Section 1 hereof due to unfavorable resolution of the Referendum or failure of PECO to commence deliveries of electricity under a majority of the Two Year Agreements prior to April 1, 1999, the

amount in the escrow account and any interest thereon shall be paid to the Company.

2.7 Increases in Price under Two Year Agreements

If at any time during the term of this letter agreement the price charged by PECO under a majority of the Two Year Agreements is in excess of the price charged under this letter agreement, the User and the Company shall negotiate an amendment to this letter agreement to reflect such increased price, it being the intention of the parties hereto that the User pay a rate for electric energy substantially equivalent to the rate it would pay if it were a customer of PECO under the Two Year Agreement.

3. The obligation of the undersigned to provide the electric energy component of the electricity price on the terms and conditions set forth herein is subject to the following conditions:

3.1 In the event that a majority of the Two Year Agreements are terminated for any reason, then this letter agreement shall terminate and thereafter be of no further force or effect.

3.2 In the event that a majority of the Two Year Agreements are amended following the date hereof, or in the event that PECO and a majority of the HEFA members entering into Two Year Agreements enter into such agreements on terms deviating materially from those set forth in the form of Two Year Agreement attached hereto, then the User and the Company agree to amend the terms of this letter agreement to the extent such terms are inconsistent with such amended or changed Two Year Agreement.

4. Upon termination of this letter agreement at any time and for whatever reason, other than pursuant to clause (i) of Section 1 of this letter agreement, both parties agree that for purposes of Section 5(a)(ii) of the Contract, the Standard Offer Generation Service rate then being offered by Boston Edison Company shall not be deemed to be the new reference price for the electric energy component of the electricity rate provided for in the Contract, but instead the new reference price will be based upon the electric energy purchase options actually available to those HEFA members who were parties to a majority of the Two Year Agreements and which otherwise meet the requirements of Section 5(a)(ii) of the Contract.

5. Each party agrees to provide the other promptly any information regarding the Two Year Agreements which such

party obtains at any time during the term of this letter agreement.

If this letter accurately sets forth the agreement between us, please so indicate by executing the enclosed copy of this letter, whereupon it shall become a binding agreement between us.

Very truly yours,

MATEP LLC

BY: MEDICAL AREA TOTAL ENERGY PLANT, INC.
(its sole Member)

By: _____

ACCEPTED AND AGREED:

DANA-FARBER CANCER INSTITUTE, INC.

By: _____

Option 2
Two Year Participant Agreement for the Sale and Purchase of Electricity

This Two Year Participant Agreement for the Sale and Purchase of Electricity ("Agreement") is made and entered into as of this _____ day of _____, 1998, by and between PECO Energy Company (" PECO Energy"), a Pennsylvania corporation, with offices located at 2301 Market Street, Philadelphia, Pennsylvania, 19103, and _____, ("Participant") with offices located at _____. PECO Energy and Participant are individually referred to herein as a "Party" and collectively as the "Parties."

Background

A. Participant is a member of the PowerOptions℠ program organized by MHI, Inc., ("MHI") a wholly-owned subsidiary of the Massachusetts Health and Educational Facilities Authority ("HEFA"). MHI organized and administers the PowerOptions℠ program to help its members purchase Electricity and energy-related services for facilities they own and/or operate.

B. PECO Energy and MHI have entered into an agreement dated March 26, 1998, governing the terms and conditions of PECO Energy's participation in the PowerOptions℠ Program.

C. Participant desires to procure Electricity from PECO Energy and PECO Energy desires to sell Electricity on the terms and conditions described herein.

The Parties, intending to be legally bound, agree as follows:

1. Definitions - These terms have the following meaning in this Agreement.

"Account" - As defined by the LDC and identified in Exhibit A, and any mutually agreed upon amendments thereto, and which are covered under this Agreement.

"Act" - Chapter 164 of the Acts of 1997, An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protections Therein.

"Benchmark Rate" - Has the meaning set forth in Section 6.3.

"Competitive Supplier" - Any entity licensed by MDTE to sell Electricity to retail customers.

"Delivery Point" - The point of interconnection between: (1) Pool Transmission Facilities ("PTF") of the New England Power Pool ("NEPOOL"), and its successors or affiliates; and (2) the facilities of the relevant LDC, at which point such LDC assumes the obligation associated with delivering electricity to customers within its territory.

"Electricity" - Retail electric energy and capacity.

"Facility - Premise or device located in Massachusetts and provided electric service under an Account listed in Exhibit A.

"Local Distribution Company" ("LDC") - An entity that owns the power distribution lines and equipment in Massachusetts required to deliver purchased Electricity to Participants.

"MDTE" - Massachusetts Department of Telecommunications and Energy or any successor agency thereto.

"Receipt Point" - With respect to an Account, the relevant LDC's metering point(s) or a point(s) designated by the LDC and located at the Facility.

"Retail Access" - The ability of customers to contract directly with entities other than the relevant LDC for the supply of Electricity.

"Standard Offer Generation Service" or "Standard Offer" - Provision of electric generation service by Massachusetts LDCs to customers not electing to have their electricity provided by a Competitive Supplier.

"Transmission" - High voltage interconnecting electric lines, equipment and systems that move Electricity from the point of generation to Delivery Points.

2. Term

This Agreement shall commence on the date first stated above and, except as provided below in this section and in Section 7 (Referendum Petition), shall remain in effect until the second anniversary of the first day of Retail Access in the service territory of any LDC ("Initial Term") at which time it shall terminate. Notwithstanding the foregoing, with respect to each Account, this Agreement shall remain in effect until the first date the meter(s) with respect to such Account is read by the relevant LDC following the above-mentioned second anniversary. By providing PECO Energy written notice at least thirty (30) days prior to expiration of the Initial Term, Participant, at its option, may extend this Agreement for an additional year at the price described in Section 6.2 below. In the event that by April 1, 1999, the referendum petition referenced in Section 7 (Referendum Petition) below is not favorably resolved as described therein or the Act is otherwise overturned and not reinstated, or it, or the settlements entered into between Participant's LDC(s) and the MDTE, are otherwise altered in a manner that materially and adversely affects either Party in the performance of its obligations hereunder, the affected Party may terminate this Agreement by written notice to the other given on or before April 1, 1999, and neither Party shall have any further liability to the other Party.

3. Delivery of Electricity

3.1 PECO Energy shall, within a reasonable time, register all of Participant's Accounts with the relevant LDC(s) effective as of March 1, 1999.

3.2 No later than the later of March 1, 1999 or a favorable resolution of the referendum petition as described in Section 7 (Referendum Petition), PECO Energy shall initiate delivery of Electricity to Participant subject to the following conditions, all of which PECO Energy shall use reasonable efforts to fulfill or effect:

(a) Licensing of PECO Energy as a Competitive Supplier by the MDTE;

(b) Execution by PECO Energy of service contract(s) with Participant's LDC(s);

(c) PECO Energy's successful completion of Electronic Data Interchange compliance testing with Participant's LDC(s);

(d) PECO Energy's receipt from Participant (or its LDC(s)) of Participant's historical usage data as provided by its LDC(s);

(e) PECO Energy's successful enrollment of Participant's Account(s) with Participant's LDC(s).

(f) The earlier of implementation of NEPOOL's 2nd Effective Date or successful resolution, in a manner reasonably acceptable to PECO Energy, of all outstanding issues relating to balancing risks and liabilities arising from the delay in said implementation that could reasonably be expected to materially and adversely affect PECO Energy.

3.3 After favorable resolution of the referendum, and satisfaction or waiver of all of the above at least six (6) days prior to an Account's next scheduled meter reading date, PECO Energy shall initiate delivery of Electricity for such Account on or before the later of the Account's next scheduled meter reading or March 1, 1999. If on or before the date required in the preceding sentence, PECO Energy initiates delivery of Electricity to eligible members, as opposed to adjunct members, of the PowerOptions℠ Program with an aggregated capacity obligation of 175 MW or greater, then PECO Energy, at its sole discretion, may delay initiating delivery of Electricity to any or all other eligible members of the PowerOptions℠ Program to any date no later than December 31, 1999. The aggregated capacity obligation of PECO Energy with respect to any group of eligible members shall be determined in accordance with good utility practice.

4. Full Requirements

Except as provided in Section 7 (Referendum Petition), and upon satisfaction or waiver the conditions listed in 3.2 above, Participant agrees to purchase and PECO Energy agrees to supply, by delivery to the Delivery Point, electric energy and capacity sufficient to provide firm, full requirements Electricity for each Account, meaning supply of Participant's total Electricity at each Receipt Point supplied from external sources. The Electricity so supplied shall be delivered to Participant through its LDC(s). Although the Electricity supplied hereunder shall be firm, PECO Energy shall not be responsible for operation of the electric lines and systems or for any service interruptions, loss of service or deterioration of electric services caused by the LDC(s) and/or NEPOOL and/or their electric lines, equipment and systems. PECO Energy shall, however, be responsible for the delivery of firm, full requirements Electricity and, except as provided below, for all requirements and associated costs imposed on Competitive Suppliers by NEPOOL or the Independent System Operator ("ISO"), or their successors, associated with the provision and delivery of such firm, full requirements Electricity. Such firm, full requirements Electricity shall be equivalent to the relevant LDC's Standard Offer Generation Service product as defined as of March 1, 1998. To the extent the Standard Offer product definition is expanded subsequently to include additional, mandatory products and the price is increased accordingly, PECO Energy shall have the right to increase the Contact Price by no more than a commensurate amount to cover such additional products, however said products may be categorized.

Subject to Section 21 (Material Change), PECO Energy shall be responsible for all nominations, balancing and any penalties and charges related thereto. Participant shall be responsible for charges for NEPOOL Regional Network Service ("RNS") which provides for transmission across the PTF system and for Local Network Service ("LNS") which provides for transmission over LDC facilities. PECO Energy shall, however, be responsible for all transmission charges associated with the use of transmission systems and services outside of NEPOOL and shall be responsible for any local point-

to-point charges as well as distribution charges for delivery of the Electricity to the NEPOOL PTF.

To the extent any charges contemplated by this section are recoverable by the LDC(s) from Participant through regulated retail distribution and/or transmission tariffs, PECO Energy shall not be responsible for such charges. If, in the future, any charges are not thus charged by the LDC(s) and become recoverable by PECO Energy, such charges shall be passed through to Participants.

5. Losses

PECO Energy shall be responsible for all transmission and distribution losses associated with the delivery of Electricity supplied under this Agreement to Participant's meters, and not included in the LDC's unbundled transmission and/or distribution tariffs. At the Delivery Point, and pursuant to NEPOOL and LDC filed procedures for loss determination, PECO Energy shall provide an additional quantity of electric energy to cover such losses, but shall not be entitled to any additional payment under this Agreement for such additional quantity so provided.

6. Contract Price

Except as provided in Section 7 (Referendum Petition) and subject to Section 8 (Escrow Account) herein, for the Initial Term of this Agreement and pursuant to the following terms, PECO Energy shall supply and Participant shall pay for Electricity at the prices below, ("Contract Price") (which price, calculated to four significant figures, includes electric energy and capacity sufficient to provide firm, full requirements Electricity for each Account and, to the extent not included in the applicable LDC's unbundled transmission and distribution tariffs, losses.)

Notwithstanding anything to the contrary in this Agreement, the Contract Price shall be effective from the applicable date set forth in Sections 8.5 and 8.6. During any period pursuant to Sections 3 or 7 in which Participant is receiving Standard Offer Generation Service at the applicable Standard Offer rates then in effect, PECO Energy shall compensate Participant monthly such that the net price of such Standard Offer Generation Service to Participant is equal to the Contract Price. In accordance with Section 8: (1) during the period before favorable resolution of the referendum, such compensation shall be paid into the escrow account as described therein; and (2) following favorable resolution of the referendum, the balance of such escrow account shall be paid to Participant as provided in Section 8.3, with any further such compensation paid pursuant to Sections 6.7 and 8.4.

6.1 **Agreement Year 1**: The Contract Price during each month of Agreement Year 1 shall be six percent (6%) less than the Benchmark Rate (as defined below) for the calendar year in which the applicable month falls.

Agreement Year 2: The Contract Price during each month of Agreement

Year 2 shall be five percent (5%) less than the Benchmark Rate for the calendar year in which the applicable month falls.

6.2 In the event this Agreement is extended for an additional year the following Contract Price applies: five percent (5%) less than the Benchmark Rate for the calendar year in which the applicable month falls.

6.3 **Benchmark Rates**

As used herein, the term Benchmark Rate means the following rates during the corresponding calendar years:

1998: $0.02800/kWh
1999: $0.03100/kWh
2000: $0.03400/kWh
2001: $0.03800/kWh

6.4 Agreement Years

For purposes of applying the percentage discounts from the Benchmark Rate, Agreement Year 1 will begin on the general legislatively mandated date for Retail Access in Massachusetts (March 1, 1998) and subsequent Agreement Years shall start on the anniversary of that date.

6.5 **Most Favored Customer**

During the period ending six (6) months following the start of Retail Access in the service territory of any LDC of Participant, PECO Energy and its affiliates shall not sell or offer to sell Electricity to any similarly-situated entity within Massachusetts at a price lower than that set forth herein. If PECO Energy or any affiliate at any time offers or sells Electricity to any similarly-situated entity for consumption within Massachusetts at a lower price than set forth herein, PECO Energy shall lower the Contract Price to a level equal to such lower price.

6.6 Notwithstanding the foregoing, the total costs charged hereunder to Participant other than for Electricity, shall not exceed those that would have been charged to Participant if it was receiving Standard Offer Generation Service.

6.7 Effective with the successful resolution of the referendum as described in Section 7 (Referendum Petition), in the event Participant remains on Standard Offer Generation Service from its LDC(s), Participant shall, during such period, receive from PECO Energy the savings by Account that Participant would otherwise have received under Section 6 (Contract Price) as against the then applicable Standard Offer Generation Service

rate(s) as payment(s) contemporaneously with the due dates for Participant's Accounts, or at Participant's option, as bill credits processed by PECO Energy sufficiently in advance of due dates to be posted by the LDC(s) as timely payments.

6.8 PECO Energy provides Participant the choice, at Participant's sole discretion, to apply any energy costs savings from this Agreement toward the costs of any projects implemented pursuant to energy-related service agreements with PECO Energy.

7. Referendum Petition

7.1 Notwithstanding Section 3 (Delivery of Electricity) and Section 4 (Full Requirements) above, until the later of March 1, 1999 or favorable resolution of the referendum petition seeking repeal of the Act, for each Account, and at PECO Energy's option, Participant shall continue to receive electricity supply from its LDC(s) under the LDC(s)' Standard Offer Generation Service at the applicable Standard Offer rates then in effect. "Favorable resolution" means: (1) the petition is not certified for referendum or is otherwise conclusively not subject to binding vote in the November, 1998 election; (2) the referendum to repeal the Act is not adopted by the people of the Commonwealth of Massachusetts in the November, 1998 election; (3) the Act is repealed by the November, 1998 referendum or is otherwise altered in a manner that materially and adversely affects PECO Energy, but, on or before April 1, 1999, Participant's LDC(s) finalize with the MDTE enforceable settlements providing for Retail Access under terms and conditions substantially similar to those contained in the Act and applicable MDTE Regulations; or (4) any other resolution reasonably acceptable to MHI and PECO Energy.

7.2 In the event the referendum is delayed beyond November 1998 by judicial action that is either not made final by, or is appealable after, the date of the November, 1998 general election, PECO Energy, at its option, may terminate this Agreement on or before April 1, 1999 with no further liability to Participant, if such referendum has not been favorably resolved at the time of such termination.

8. Escrow Account

8.1 During the period prior to favorable resolution of the referendum, on Participant's behalf PECO Energy shall pay into an escrow account the savings by Account that Participant would otherwise have received under section 6 above, as against the then applicable Standard Offer Generation Service rate(s), and shall provide Participant no more frequently than monthly a written statement detailing the savings so paid.

8.2 Said escrow account shall be established by MHI and administered by MHI or a third party with terms and conditions mutually agreed upon by MHI and PECO Energy.

8.3 In the event of the favorable resolution of the referendum as described in section 7.1 above, and within forty five (45) days thereafter, any savings so escrowed by Account shall be disbursed to Participant, with interest thereon as provided below, such payments being applied at Participant's option as a credit against Participant's next Electricity bill for each Account, processed sufficiently in advance of bill due dates to be posted by the applicable LDC(s) as timely payments.

8.4 Thereafter, until such time as PECO Energy initiates delivery of Electricity, Participant's savings shall not be escrowed, but shall be made, at Participant's option, as a payment or as a bill credit for each Account processed sufficiently in advance of bill due dates to be posted by the applicable LDC(s) as timely payments.

8.5 If the Participant executes and delivers this Agreement to PECO Energy on or before May 1, 1998, and PECO Energy executes this Agreement, PECO Energy shall begin to calculate and escrow said savings with respect to each Account as of the first meter reading date(s) in March, 1998. Delivery shall mean by hand to PECO Energy, by delivery on or before May 1, 1998 to ovemight commercial courier service, or by postmark on or before May 1, 1998.

8.6 If the Participant executes and delivers this Agreement after May 1, 1998, and PECO Energy executes this Agreement, PECO Energy shall begin to calculate and escrow said savings with respect to each Account as of the first meter reading date(s) following Participant's execution.

8.7 On the escrowed savings Participant shall be paid interest net of any fees, expenses and/or charges incurred for establishing, administering and/or terminating said escrow account.

9. Green Electricity

Participant may elect to receive "green" Electricity for the calendar years after the later of March 1, 1999 or favorable resolution of the referendum. PECO Energy shall notify Participant of the price and terms of providing such "green" Electricity at the time PECO Energy makes such option available.

10. Participant Employees

If requested by Participant, and after the later of the March 1, 1999 or successful resolution of the referendum as described in Section 7 (Referendum Petition), PECO

Energy or its affiliate shall offer to supply firm, full requirements Electricity to the Massachusetts residence(s) of each eligible employee of Participant. To be eligible for such an offer, an employee must be creditworthy and eligible to receive full employee benefits from Participant. In the event such service is offered by an affiliate, PECO Energy shall assure the timely payment and performance by its affiliate of its obligations to such employees in a manner and in a form reasonably satisfactory to MHI. The service shall be offered to such employees pursuant to separate Participant Employee Agreements on the following terms:

10.1 **Term.** Employees who opt to purchase Electricity from PECO Energy or its affiliate (each a "Participant Employee") shall be required to do so for a term of two (2) years, provided, that, subject to subsection 10.3(c) below, each such Participant Employee may terminate such service as of the first anniversary of the start of service under the applicable Employee Participant Agreement.

10.2 **Base Price.** The base price of Electricity before any permitted application of credits and discounts described below shall be the Standard Offer Generation Service rate then offered by the Participant Employee's LDC.

10.3 **Credits.**

(a) On the first anniversary of the start of service under the applicable Employee Participant Agreement, each Participant Employee shall be provided with credits equal to six percent (6%) of the cost of his/her total purchases from PECO Energy or its affiliate, as applicable, during such year.

(b) Following the first anniversary of the start of service under the applicable Employee Participant Agreement, each Participant Employee shall be provided credits on a monthly basis equal to five percent (5%) of the cost of his/her total purchases from PECO Energy or its affiliate, as applicable, during such month.

(c) Credits may be redeemed at face value for any service or portion of services of equal price including without limitation, Electricity, and offered by PECO Energy or its affiliates or partners. Notwithstanding the foregoing, a Participant Employee who opts to terminate such service on the first anniversary of the start of service under the applicable Employee Participant Agreement, may either: redeem his/her credits for any service or portion of service of equal costs offered to Participant Employees by PECO Energy or any of its affiliates or partners, other than past Electricity; or receive cash equal to one-half (1/2) the face value of his/her accumulated credits.

11. Billing and Payment

Under the Standard Complete Billing Service Option as provided under the Act and applicable MDTE regulations, in the event PECO Energy has initiated delivery of Electricity, PECO Energy shall cause the Participant's LDC(s) to bill Participant monthly for Electricity provided hereunder, contemporaneously with such LDC's billing for services with respect to the same period, with payment due on the date such LDC's bill is due. Any LDC fees for said billing service shall be the responsibility of Participant. Participant's LDC will also bill separately for its transmission, distribution and other related charges, including, without limitation, demand charges, customer charges, meter charges, charges for funding of renewable resources and for energy efficiency services and any transition charges (i.e. stranded cost access charge.) Participant will remit all payments directly to said LDC. Upon notice to the other Party and the relevant LDC, either Party may opt to switch to Standard Pass-through Billing Service under which PECO Energy shall provide a separate bill for Electricity with a payment due date contemporaneous with that of the corresponding LDC bill.

12. Summary Billing

In the event PECO Energy has initiated delivery of Electricity and Standard Pass-through Billing Service is implemented, and at Participant's option, PECO Energy shall consolidate on a single bill format ("Summary Billing"): (1) multiple Accounts with a common meter reading date within any LDC; or (2) for each monthly billing period multiple Accounts within any LDC, provided that payment under this latter Summary Billing option shall be due in five (5) business days from issuance of the Summary Bill.

13. Failure to Pay

In the event PECO Energy has initiated delivery of Electricity, if Participant fails to pay in full for Electricity within twenty-five (25) days of the invoice date of a bill, then PECO Energy shall:

13.1 During the forty-five (45) day period following the invoice date of the bill accrue interest on any such overdue amount at a rate equal to 1.25% per month until such time as the overdue amount is paid in full.

13.2 If by the end of said forty-five (45) day period, any overdue amount is not paid in full with interest thereon, PECO Energy shall continue to accrue interest on the overdue amount as provided above and, following written notice to the Participant, may charge the Participant for Electricity purchased after expiration of that forty-five (45) day period at the applicable Standard Offer Generation Service rate(s).

13.3 If during the sixty (60) day period following the invoice date of the bill, Participant pays the overdue amount in full with interest thereon, Participant may be charged for Electricity from the date of said payment at

the Contract Price contained in Section 6.1 above.

13.4 If by the end of said sixty (60) day period, however, Participant fails to pay in full any overdue amount with interest thereon, PECO Energy, at its option, may terminate this Agreement, provided however that the Participant, through payment in full of all past due amounts plus interest thereon, may reinstitute the Agreement but shall be charged for Electricity throughout the remainder of the Agreement at the then applicable Standard Offer Generation Service rate(s).

14. Point of Contact

Participant shall designate an authorized representative who shall act as PECO Energy's single point of contact concerning services under this Agreement. In turn, PECO Energy shall, to the extent permitted under applicable rules and regulations, act as the principal point of contact for Participant's Electricity needs. Accordingly, PECO Energy shall designate and provide Participant the address and phone number of both a business contact and a technical contact who shall act as Participant's primary points of contact for their respective areas of expertise. PECO Energy shall review and consider in good faith whether to incorporate into this Agreement and any Participant Employee agreements the terms of any uniform or standard consumer protection standards developed by an agency of the Commonwealth of Massachusetts singly or in concert with other states.

15. Equipment

Participant is responsible for installing, maintaining and operating all equipment and related services required by its LDC, NEPOOL, the ISO-NE, or their successors, and/or the local transmission provider, to receive service hereunder, unless Participant assigns that responsiblity to PECO Energy, in which case PECO Energy shall bill Participant for the installation, operation and maintenance of equipment so required.

16. Dispatch of Participant's Eligible On-Site Generation

Pursuant to mutually agreed upon terms and conditions, and the then current ISO-NE Operating Agreement, Participant may, at its option, provide PECO Energy the right to dispatch some, or all, of Participant's on-site generating facilities that are eligible for and subject to central dispatch.

17. No Participation in Municipal Aggregation

Participant agrees that it shall not participate in any municipal aggregation for purchase of Electricity with respect to the Accounts set forth in Exhibit A. Participant represents that it shall take all steps necessary to "opt out" of any municipal or municipally-sponsored Electricity purchasing program.

18. Default and Termination

18.1 Event of Default. An event of default (an "Event of Default") shall be deemed to exist upon the occurrence of any one or more of the following events:

(a) except as provided in Section 13 above, failure by either Party to meet any payment obligation hereunder, if such failure continues for a period of fifteen (15) days following written notice of such failure;

(b) failure by either Party to perform fully any other material obligation hereunder if such failure continues for a period of thirty (30) days following written notice of such failure;

(c) if by order of a court of competent jurisdiction, a receiver or liquidator or trustee of either party, or of any of the property of either party, shall be appointed, and such receiver or liquidator or trustee shall not have been discharged within a period of sixty (60) days; or if by decree of such a court, either party shall be adjudicated bankrupt or insolvent, or any substantial part of the property of such party shall have been sequestered, and such decree shall have continued undischarged and unstayed for a period of sixty (60) days after the entry thereof, or if a petition to declare bankruptcy or to reorganize either party pursuant to any of the provisions of the federal bankruptcy code, as it exists from time to time, or pursuant to any other similar state statute applicable to such party in effect from time to time, shall be filed against such party and shall not be dismissed within sixty (60) days after such filing; or

(d) if either Party shall file a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consent to the filing of any bankruptcy or reorganization petition against it under any similar law, or, without limitation to the generality of the foregoing, if either Party shall file a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the federal bankruptcy code as it exists from time to time, or pursuant to any similar state statute applicable to such Party in effect from time to time, or an answer admitting the material allegations of a petition filed against it in such a proceeding, or if either Party shall make an assignment for the benefit of its creditors, or if either Party shall admit in writing its inability to pay its debts generally as they become due, or if either Party shall consent to the appointment of a receiver or receivers, or trustee or trustees, or liquidator or liquidators of it or all or any part

of its property.

18.2 Remedies. Upon the occurrence and during the continuation of any Event of Default hereunder, the Party not in default shall have the right:

(a) to terminate this Agreement upon ten (10) days written notice to the defaulting Party; and/or

(b) to pursue any other remedy under this Agreement or now or hereafter existing at law or in equity or otherwise.

18.3 Regarding each covered Account, termination shall be effective on the date of the next scheduled meter reading for said Account, unless PECO Energy does not submit the required "drop customer" transaction to the LDC two or more days prior to the next meter reading date, in which case the effective date of termination shall be the next subsequent meter reading date.

19. Provision of Data

By executing this Agreement, Participant authorizes its LDC(s) to provide PECO Energy, and through PECO Energy, MHI, the following data: historical consumption and load data, payment and credit history, types of service, meter readings and any other information relevant to Participant's current LDC(s) Accounts, and available to Customer by law or regulation, except that PECO Energy shall not provide MHI any payment and credit history so received. If necessary, Participant shall directly request such information from its LDC(s) using a letter substantially in the form attached hereto as Exhibit B, and shall promptly relay to PECO Energy all such data received. Participant shall not be responsible for fees, if any, charged by its LDC(s) for the LDC's initial provision of such data, but shall be responsible for fees, if any, charged by the LDC(s) for any subsequent provision of data.

20. Confidentiality of Participant's Data

All of Participant's data as listed in Section 19 above that PECO Energy obtains through this Agreement belongs to Participant and shall be provided as requested to Participant, but only to the extent collected or maintained, in electronic format, without cost, upon five (5) days notice. PECO Energy further agrees to keep confidential Participant's data so obtained and to restrict access to such information to only MHI and to those employees and/or third parties who need such access to enable PECO Energy to perform its services under this Agreement.

21. Material Change

In the event PECO Energy has initiated delivery of Electricity, Participant shall provide PECO Energy reasonable advance notice of: (1) closure of any Account; (2) a reduction of usage under an Account to zero consumption without closure of the Account; and (3) any change in use within Participant's control, such as Facility closings, planned equipment outages or replacements, new buildings or other uses of Electricity or other similar circumstances, that will increase or decrease Participant's total monthly usage under all Accounts by more than 10%, as measured against usage for the corresponding month in the immediately preceding year (25% if Participant's usage under all Accounts totalled less than one million kWh for the calendar year immediately preceding March 1, 1999, and for each subsequent Agreement Year, for the calendar year immediately preceding said Agreement Year). Participant also shall provide prompt notice of any circumstances outside Participant's control, such as equipment failure, it is reasonable to expect PECO Energy would not have knowledge of and that decrease Participant's total monthly usage under all Accounts by more than 10% (25% if Participant's usage under all Accounts totalled less than one million kWh for the calendar year immediately preceding March 1, 1999, and for each subsequent Agreement Year, for the calendar year immediately preceding said Agreement Year). (Each of the above referred to as a "Material Change"). As an informational service, during any portion of the term of this Agreement when Participant is receiving Standard Offer Generation Service, PECO Energy may, at its option, calculate and notify Participant of any such penalties or charges Participant would have been liable for if PECO Energy had initiated delivery of Electricity. PECO Energy shall pay all properly imposed charges or penalties assessed by the relevant LDC for variations between Participant's Electricity usage and the amount PECO Energy supplies, provided that Participant shall reimburse PECO Energy for any such charges or penalties caused by Participant's failure to provide timely notice of any Material Change.

22. Warranty

PECO Energy warrants good title free and clear of all encumbrances and the right to deliver title to all Electricity sold hereunder. PECO Energy shall indemnify, defend and hold Participant harmless against all suits, actions, debits, accounts, costs, loss, damage and expense arising out of or relating to adverse claims on the Electricity

delivered, which are applicable before or at the time title to said Electricity passes to Participant. All Electricity delivered hereunder shall meet the quality standards of NEPOOL, the ISO, the Participant's LDC and any other competent authority. **The warranties set forth in this paragraph are exclusive and are in lieu of all other warranties whether statutory, express or implied, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or arising out of any course of dealing or usage of trade.**

23. Measurement

Quantities of Electricity shall be measured in accordance with the tariff of the applicable LDC in effect from time to time.

24. Risk of Loss

Title to Electricity sold by PECO Energy and purchased hereunder shall pass at the Delivery Point(s). Control, possession and risk of loss of the Electricity and responsiblity for any loss, damage or injury occasioned thereby shall transfer at the Delivery Point(s). Each Party will indemnify and hold the other harmless from third party claims of any nature attributable to such Electricity while said Party has control and possession, excluding loss, injury or damage caused by the Party not in control and possession.

25. Taxes

Participant shall pay, or cause to be paid, all sales, gross receipts, excise or other taxes due on receipt of Electricity at the Delivery Point(s). In the event PECO Energy has initiated delivery of Electricity, PECO Energy shall pay all taxes imposed on Electricity prior to its delivery to the Delivery Point(s). Participant shall be responsible for identifying and requesting exemption from the collection of sales, excise, or other applicable taxes due with respect to delivery and/or sale of Electricity by filing the required documentation with its LDC(s) and PECO Energy.

26. Failure of PECO Energy to Deliver

Unless excused by an event of Force Majeure or of default by Participant, if PECO Energy fails to deliver to any of the Delivery Points, all or part of the Electricity required by Participant for its Accounts, Participant may purchase electricity from its LDC(s), and/or from alternative Competitive Suppliers, to cover the amount PECO Energy failed to supply for the period of such failure, and PECO Energy shall reimburse Participant for any such commercially reasonable purchase of replacement electricity in an amount equal to the positive difference, if any, between the total cover cost to Participant and the cost to Participant if PECO Energy had fully performed its obligations hereunder. The price paid hereunder by Participant to its LDC(s) for replacement electricity shall be deemed "commercially reasonable."

27. Limitation of Liability

For breach of any provision for which an express remedy or measure of damages is provided in this Agreement, the liability of the defaulting Party shall be limited as set forth in such provision and all other damages or remedies hereby are waived. If no remedy or measure of damages is expressly provided, the liability of the defaulting Party shall be limited to direct damages only and all other damages and remedies are waived. In no event shall either Party be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, including, but not limited to, loss of profits or revenue, downtime costs, loss of use of any property, cost of substitute equipment or facilities, whether arising in tort, contract or otherwise. Notwithstanding the foregoing, any direct damages for failure of PECO Energy to deliver Electricity pursuant to this Agreement shall also include all reasonable costs and expenses of Participant in arranging any supply of replacement electricity. This provision shall survive the expiration or early termination of this Agreement.

28. Force Majeure

Either Party shall be excused from performance hereunder, other than either Party's obligation to make payments of amounts already due hereunder, and shall not be liable in damages or otherwise if, and to the extent that, the Party shall be unable to perform fully or is prevented from performing fully by an event of Force Majeure. For such purposes, Force Majeure shall mean any act, event, cause or condition that is beyond the Party's reasonable control, including without limitation any hurricane, tornado, flood, labor disputes, lightning, earthquake, fire, civil disturbance, or act of God or the public enemy, that is not caused by the Party's fault or negligence, and that by the exercise of reasonable diligence the Party is unable to prevent, avoid, mitigate or overcome. The Party affected by an event of Force Majeure shall provide the other Party, as soon as reasonably practicable, with written notice of the event of Force Majeure and shall make all reasonable efforts to mitigate the effect of such event. If the event of Force Majeure is not corrected with 90 days, the non-affected Party may terminate the Agreement.

29. Equal Employment Opportunity Clause

The Equal Employment Opportunity clause required under Executive Order No. 11246, the affirmative action commitment for veterans, set forth in 41 CFR 60-250.4, the affirmative action clause for handicapped workers, set forth in 41 CFR 650-741.4, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are included by reference in this Agreement, and PECO Energy certifies, warrant and covenants that it has and shall at all times comply with the requirements contained therein to the extent required thereby.

30. Government Regulations

This Agreement and all rights and obligations of the Parties hereunder are subject to all applicable federal, state and local laws and all duly promulgated orders and duly

authorized actions of governmental authorities. If any transaction pursuant to or related to this Agreement shall require the approval or authorization of any governmental body, the rights and obligations of the Parties shall be subject to obtaining such approval or authorization, and the Parties agree to cooperate and use reasonable efforts to obtain such approval or authorization and to satisfy the conditions listed in Section 3.2. PECO Energy shall obtain at its expense all permits and licenses necessary to perform the services under this Agreement.

31. Public Disclosure

Without first obtaining written consent of the other Party in its reasonable discretion, neither Party shall make any press release, or other public announcement relating to or arising out of this Agreement.

32. Waiver and Amendment

Any waiver by either Party of any of the provisions of this Agreement must be made in writing, and shall apply only to the instance referred to in the writing, and shall not, on any other occasion, be construed as a bar to, or a waiver of, any right either Party has under this Agreement. The Parties may not modify, amend, or supplement this Agreement except by a writing signed by the Parties hereto.

32.1 Notice

All notices shall be in writing and shall be provided by hand, overnight commercial courier service, certified mail, telecopy or telex.

Notices to PECO Energy shall be sent to:

PECO Energy Company
Attention: Phillip T. Eastman, Jr.
Director, National Energy Team
2301 Market Street, S19-1
Philadelphia, PA 19103

Phone: (215) 841-5640
Fax: (215) 841-5877

PECO Energy Company
National Energy Team
Attn: Lynn Duffner
28 State Street, Suite 1100
Boston, Massachusetts 12109

Phone: (617) 573-5074
Fax: (617) 573-5075

Notices to Participant shall be sent to:

_____

_____

_____

Phone:
Fax:

33. Assignment

This Agreement may not be assigned without the prior written consent of the non-assigning party, except that PECO Energy may, without consent, assign to a corporate affiliate provided PECO Energy remains liable hereunder.

34. Binding Effect

This Agreement is entered into solely for the benefit of PECO Energy and Participant and their respective successors and permitted assigns.

35. Complete Agreement

This Agreement together with any exhibits incorporated herein by reference contains the complete and exclusive agreement and understanding between the Parties as to its subject matter.

36. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, other than those relating to choice or conflict of law. Any action at law, suit in equity or judicial proceeding arising from or in connection with, out of or relating to this Agreement shall be litigated only in the Courts of the Commonwealth of Massachusetts, County of Suffolk. The parties waive any right they may have to transfer or change the venue of any litigation resulting hereunder. Nothing in this Agreement shall displace the applicability of any federal law or the jurisdiction of MDTE, the Federal Energy Regulatory Commission, or any other regulatory agency or body.

37. Signators' Authority/Counterparts

The undersigned certify that they are authorized to execute this Agreement on behalf of their respective organizations. This Agreement may be executed in two or more counterparts, each of which shall be an original. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

PECO Energy Company

By:_____

Name:_____

Title:_____

Date:_____

Participant:_____

By:_____

Name:_____

Title:_____

Date:_____

[Include applicable LDC definition (account number) for each Account covered under Participant Agreement]

LDC	ACCOUNT No.	PHONE No.	METER No.

Exhibit "B"

FORM LETTER - AUTHORIZATION FOR RELEASE OF ELECTRIC UTILITY DATA TO BE SIGNED BY PARTICIPANT ON INSTITUTION'S LETTER HEAD

[Date]

Re: Account Data for Accounts listed in Attachment
[Attach relevant portion of Exhibit A for description of Accounts]

This letter is to serve as authorization to release to PECO Energy's National Energy Team (The NET) all information relative to our account(s) listed in the attachment, including but not limited to service, load history, load profiles, rates, billing data and billing determinants. This request for release is valid for two (2) years from the date of this letter.

Very truly yours,

Participant's Signature

EXHIBIT B

Two Year Agreements between PECO and each of the following institutions:

Beth Israel Deaconess Medical Center
Beverly Hospital
Community Hospitals of Eastern Middlesex
Deaconess Nashoba Hospital
Deaconess Glover Waltham Hospital
Massachusetts Eye and Ear Infirmary
New England Medical Center

(BS2 48812)

EXHIBIT C

Current Users

1. Beth Israel Deaconess Medical Center, Inc. (successor by merger to The Beth Israel Hospital Association)
2. The Brigham and Women's Hospital, Inc.
3. Beth Israel Deaconess Medical Center, Inc. (successor by merger to New England Deaconess Hospital)
4. Dana-Farber Cancer Institute, Inc. (formerly known as Sidney Farber Cancer Institute, Inc.)
5. Joslin Diabetes Center, Inc. (formerly known as Joslin Diabetes Foundation, Inc.)
6. The Children's Hospital Corporation (assignee of The Children's Hospital Medical Center)
7. President and Fellows of Harvard College

EXHIBIT 7

Facsimile Cover Sheet

To:

Paul Williams (730-0691)
Stuart Novick (355-6110)
Tom Vautin (495-9473)
Brian Meyer (2-3608)
John Gaida (732-5831)
Frank Sullivan (2-7111)
Andrew Cohn (526-5000)
Marvin Schorr (523-0073)
Rud Ham (508-653-4274)
Len Devanna (225-4071)
George Player (732-6724)
Patrick Miller (432-2596)
Colin MacLachlan (732-6724)
Jim Turner (732-6724)
Linda Sutliff (2-4425)

From: Rick Shea
Company: MASCO
Phone: 617-632-2775
Fax: 617-632-2759

Date: April 14, 1998
Pages including this cover page: 4

Comments:

The attached will be discussed at the April 16th, Energy Meeting at 10:30 a.m. at MASCO, 375 Longwood Avenue, 5th Floor, main conference room.

Please call Eileen Barrette at 632-2862 if you have any problems receiving this fax.

To: Mr. Thomas Vautin
Mr. Leonard R. DeVanna

From: MATEP Users — Energy Working Group

Date: April 14, 1998

We very much appreciate the effort you have made to propose "Preliminary Criteria for Determining Electric Comparability" under the revised User Contracts. We recognize that it took a great deal of effort to consider all of these factors.

We are concerned, however, that the multiple criteria which you outlined go beyond the parameters that are called for under the existing User Contracts and have the potential to skew the analysis from the original intent.

Nevertheless, in the spirit of trying to address the essential issues, we are responding with the following counterproposals. For convenience, we use the headings you have outlined.

1. Market Acceptance.

We disagree with your "majoritarian" concept which we feel goes beyond what is required to establish a market price. We are prepared to utilize the following: If two or more electrical customers (i) comparable to the User (ii) located in the (former) Boston Edison Company service territory and (iii) having a total aggregate demand of at least 20 megawatts (the "Comparable Group"), are able to contract for, and obtain delivery of, alternative supplies of electricity, then all "market acceptance" criteria for a new reference price would be satisfied.

2. Quality of Service/Comparability of Service.

We do not believe that the benchmark should be the "highest degree of firmness and curtailment priority" since the market is likely to evolve. For example, in the future even critical care institutions are likely to be able to bifurcate their load requirements, with different levels of firmness depending on the critical nature of the particular function.

On the other hand, the User institutions recognize that comparisons should not be made to users with very different load requirements. Accordingly, comparability of service would be determined by reference to: the levels of electrical service commonly utilized by other critical care institutions comparable to the Users.

In addition the Users require that certain elements of the User Contracts be clearly confirmed as not related to comparability such as: (a) the existence of liquidated damages and take-over rights and (b) the availability of dedicated onsite facilities combined with grid provided electricity.

3. Financial Integrity.

Because the User Contracts allow the alternative supplies of electricity to be contracted for directly "or through intermediaries," the test of financial integrity should be able to be met either (a) through assured contracts between the intermediary and power generators that are "in place" and cover the entire load and/or (b) the financial net worth of the provider is at least equal to the initial purchase price of the MATEP facility paid by AES.

4. Other Terms and Conditions.

We do not accept your other proposals in this area. However, we recognize your concern that if, for example, the PECO two-year contracts were used as the basis for comparable service, several issues arise and we have proposed solutions as follows:

a. Length of Term. If, for example, the price proffered to the Comparable Group by PECO is for a two-year period and that is the new "reference price", then the Users will commit to MATEP for a two-year period to live with that new reference price, subject to the points below.

b. Cancellation of Reference Price Contract. If prior to the end of the two-year term of the PECO contract, the contract were to terminate, then MATEP would similarly not be bound to continue to meet the PECO reference price for the remainder of the two-year period, but instead the provisions of the User Contract would be reinvoked and a new "reference price" would be reestablished based on the then current market.

c. Betterment of the Reference Price by the Comparable Group. If the price obtained by the Comparable Group (that was used as the reference price for the Users) were to be renegotiated by the Comparable Group during, for example, the two-year period with PECO, then at the point of that renegotiation the Users would be free to come back and point to the new reference price established in the renegotiated contract of the Comparable Group. (However, the Users would not be free to do this during the two-year period with respect to a price negotiated by a different group of users, i.e., not the Comparable Group.)

5. Information Availability.

We do not believe this should be part of any pricing comparability mechanism as it will lead to excessive complexity. The parties in good faith will, in the normal

course, share information.

6. Other Issues.

We note that many of the "Other Issues" involve factors which go in both directions. Nevertheless in the Users' judgment these should not be taken into consideration.

* *

We hope the above suggestions will form a useful basis for promptly resolving this issue. We look forward to meeting with you on April 16.

marthad/588.94.588/vautin410.wpf

EXHIBIT 8

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 9-4533 H

DANA-FARBER CANCER INSTITUTE, INC.,

Plaintiff,

v.

MATEP LLC and MEDICAL AREA TOTAL ENERGY PLANT, INC.,

Defendants.

COMPLAINT

Introduction

1. This is an action for money damages. Pursuant to a June 1, 1998 letter agreement ("Letter Agreement"), the plaintiff paid the defendants more than $327,000, which has been deposited into an escrow account under the defendants' exclusive control. Under the terms of the Letter Agreement, on April 24, 1999, the plaintiff became entitled to the escrowed funds, together with interest. Despite the plaintiff's repeated demands, the defendants have failed and refused to return the escrowed funds.

Parties

2. The plaintiff Dana-Farber Cancer Institute, Inc. ("Dana-Farber") is a charitable corporation, organized under Chapter 180 of the Massachusetts General Laws, with a principal place of business in Boston, Suffolk County.

3. Dana-Farber operates various health care facilities.

4. MATEP LLC ("MATEP LLC") is a limited liability corporation, organized under the laws of Delaware, with a usual place of business in Boston, Suffolk County.

5. Medical Area Total Energy Plant, Inc. ("MATEP, Inc.") is a Massachusetts corporation with a usual place of business in Boston, Suffolk County. It is the sole Member of MATEP LLC.

6. MATEP LLC and MATEP, Inc. (collectively "MATEP") are the owners and operators of the Medical Area Total Energy Plant ("the Plant"), a total energy plant and related distribution system. The Plant provides electricity, steam and chilled water to Dana-Farber and to other hospitals and educational institutions in the Longwood Medical Area of Boston.

The June 1, 1998 Letter Agreement

7. Prior to May 1998, the rate which Dana-Farber had been charged for the electricity purchased from the Plant had been pegged to certain applicable rates of the Boston Edison Company ("Edison").

8. Pursuant to a written contract with Dana-Farber, if cheaper alternative electricity became "actually available," MATEP was obligated to charge Dana-Farber the cheaper rate rather than the Edison rate.

9. In or about May, 1998 an electric utility known as PECO Energy Company ("PECO"), which had never previously delivered electricity to Massachusetts customers, contracted to provide electricity to many Massachusetts

health and educational institutions. PECO's rates were more than 20% lower than Edison's.

10. On or about June 1, 1998, Dana-Farber and MATEP entered into the Letter Agreement confirming that, if electricity from PECO became "actually available," MATEP would charge Dana-Farber the lower PECO rate for the period June 1, 1998 through February 28, 2001. (A copy of the Letter Agreement is attached hereto and marked "A").

The Letter Agreement's Simple Test

11. Dana-Farber and MATEP agreed upon a simple test to determine if electricity from PECO became "actually available." They appended to the Letter Agreement, as Exhibit B, a list of seven hospitals which had contracts with PECO ("Two Year Agreements") and agreed that the lower PECO rate would apply if PECO "*commenced* deliveries of electricity under a majority of the Two Year Agreements . . . ." by April 1, 1999. Letter Agreement, pp. 1-2 (emphasis added).

12. The Letter Agreement also provided that until PECO "*commenced* deliveries of electricity under a majority of the Two Year Agreements," Dana-Farber would pay MATEP the full Edison rate, and MATEP would deposit into an escrow account the difference between the Edison rate and the lower PECO rate. Letter Agreement, p. 3 (emphasis added).

13. If PECO "*commenced* deliveries of electricity under a majority of the Two Year Agreements" prior to April 1, 1999, MATEP would charge Dana-Farber the lower PECO price until February 28, 2001 and "within forty days" would disburse to

Dana-Farber "any amounts in the escrow account . . . with interest thereon at the rate paid by the entity holding the escrowed funds." Id. (emphasis added).

PECO Commenced Deliveries Of Electricity Under A Majority Of the Two Year Agreements By March 25, 1999

14. On March 16, 1999 PECO "commenced deliveries of electricity" to the first of the seven hospitals under the Two Year Agreements.

15. By March 25, 1999, PECO had "commenced deliveries of electricity" to at least four of the seven hospitals under the Two Year Agreements.

MATEP's Refusal To Release The Escrowed Funds

16. On April 14, 1999, Dana-Farber notified MATEP that PECO had "commenced deliveries of electricity under a majority of the Two Year Agreements" prior to April 1, 1999 and demanded the release of the escrowed funds plus interest.

17. On June 16, 1999 Dana-Farber provided MATEP with the relevant portions of bills rendered by PECO (d/b/a Exelon Energy) to five of the seven hospitals listed in the Letter Agreement for electricity delivered in March, 1999. Those bills, copies of which are attached hereto and marked "B," "C," "D," "E" and "F," clearly demonstrate that PECO "*commenced* deliveries of electricity" during March, 1999 to a majority of the hospitals under the Two Year Agreements.

18. In accordance with the Letter Agreement, MATEP is obligated to provide Dana-Farber with electricity at the lower PECO price until February 28, 2001.

19. In accordance with the Letter Agreement, MATEP also became obligated to refund the escrowed funds, together with interest, "within forty days" after March 25, 1999, i.e. by April 24, 1999.

20. Despite repeated demands, MATEP has failed and refused to refund the escrowed funds, together with interest, to Dana-Farber.

21. Upon information and belief, the total amount of the escrowed funds, together with interest, currently exceeds $340,000.

WHEREFORE, the plaintiff Dana-Farber Cancer Institute, Inc. prays that this Honorable Court:

1. Determine its damages and enter judgment against the defendants in that amount together with interests and costs;

2. Award the plaintiff its reasonable attorneys' fees and costs; and

3. Grant such other and further relief as it deems meet and just.

DANA-FARBER CANCER
INSTITUTE, INC.

By its attorneys,

John G. Fabiano (BBO #157140)
Andrew H. Cohn (BBO #090760)
Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109-1803
Telephone: (617) 526-6000

Dated: September 17, 1999

THE PLAINTIFF CLAIMS TRIAL BY JURY ON ALL ISSUES.

EXHIBIT 9

MATEP

Inadmissible Settlement Communication
Delivered by email

January 26, 2021

Gretchen May
President & Executive Director
Longwood Medical Energy Collaborative
164 Longwood Avenue
Boston, MA 02215

RE: CES-E Adjustment Dispute – STEP 2 Dispute Resolution Process

Dear Gretchen,

Thank you for your most recent written communication (December 8, 2021) on behalf of the LMEC Institutions in response to the discussion held among the parties (LMEC, MATEP, and LEP) on November 19, 2021 to further the effort of resolving the dispute regarding the Clean Energy Standard Expansion invoice adjustments. Like you, we appreciate that the session was open, thoughtful, and productive aimed at bringing the parties together to resolve near term issues while also providing a strong foundation to continue our collaborative work on innovative solutions to mutual long-term challenges.

To assist the LMEC Institutions in the evaluation of MATEP's offer to settle the CES-E dispute by having MATEP and the Institutions (on a collective basis) share equally in the amount of the proposed CES-E Adjustment, the LMEC Institutions have requested that MATEP provide further clarification on its intentions with respect to: 1) invoicing for a Reliability/Firmness Adder; and 2) present a term sheet or summary of MATEP's proposal for a "restructured agreement" to bring the parties into better alignment toward the creation of a more innovative and sustainable long-term energy future. For the avoidance of doubt, MATEP views these issues as entirely separate, and requests that its sincere and reasonable offer to resolve the CES-E dispute as described above be answered directly. In a further gesture of good faith, MATEP will nonetheless provide the additional information requested.

With respect to the Reliability/Firmness Adder, MATEP notes that the parties have not executed a Memorandum of Understanding establishing a reference price for electricity supply and strongly suggests we come together to execute an MOU. To that end, attached is a draft MOU for LMEC's review. As we have communicated previously, MATEP does not accept LMEC's unilateral designation of a reference price for calendar years 2022 and 2023. In verbal and written communications from as early as March 2021, MATEP has expressed its concerns that LMEC's designated reference price does

not adequately reflect the "comparable level of service" standard required under the Amended Utilities Contract (AUC). However, we do believe the LMEC designated price can serve as a base to which a Reliability/Firmness Adder can be combined in order to arrive at a mutually agreeable Reference Standard Price.

MATEP shared an initial analysis on the Reliability/Firmness Adder performed on its behalf by Charles River Associates (CRA) on August 31, 2021, and then shared a more detailed version of the analysis in a meeting between the Boards of Directors of LMEC and Longwood Energy Partners (LEP) on November 10, 2021. Under CRA's "Base Case" scenario, the calculated reliability adder was $27.75/MWh. Additional scenarios were examined with a calculated reliability adder ranging from $9.60/MWh in a "Low Flex Case" to $54.16/MWh in a "High Flex Case." The discussion on November 10 was candid and forthright regarding the significantly higher than anticipated operating costs confronting MATEP associated with unplanned maintenance and project costs stemming from inadequate transparency during pre-transaction and transition diligence on at least one major capital upgrade. These unanticipated projects have resulted in substantially higher proposed CAPEX budgets for the next three to five years.

Given the urgent need to address these issues, during the November 10, 2021 meeting MATEP indicated its intention to invoice for the Reliability/Firmness Adder beginning on January 1, 2022. That remains MATEP's intention. However, in the hope that we can continue our open and cooperative dialogue from the November 19 meeting among the parties, MATEP proposes to do so in the following manner:

1) MATEP proposes the parties work expeditiously and in good faith to execute an MOU, a draft of which is attached, to establish a mutually agreed upon reference standard price for electricity supply for calendar years 2022 and 2023 that includes, for each year of the MOU, the sum of the LMEC-designated First Point Power price, and an agreed upon rate for the Reliability/Firmness Adder within the range as calculated in the CRA analysis. To provide price certainty over the next two years, this MOU does not contemplate any additional price adjustments due to market changes, course of performance, or First Point/4BC invoice adjustments – the price included in the executed MOU will reflect the final price for calendar years 2022 and 2023 respectively. An agreed upon rate should be determined and a final MOU should be executed no later than February 28, 2022.

2) MATEP will include the "Reliability/Firmness Adder" description as a line item on January invoices but will not assess a charge on that invoice to allow for good faith discussions to proceed. The agreed upon rate established in the executed MOU will be effective as of January 1, 2022. February 2022 invoices will include an adjustment for January 2022 volumes charged at the agreed upon rate.

3) In the event MATEP and the LMEC Institutions do not execute an MOU by February 28, 2022, MATEP will invoice the Reliability/Firmness Adder at the calculated "Base Case" rate of $27.75/MWh effective as of January 1, 2022.

Executing an MOU for the period covering calendar years 2022 and 2023 will provide price certainty for the LMEC Institutions, facilitate Cooling Tower and other improvements at MATEP, and allow the parties to focus significant collaborative time and attention on contractual restructuring to better accommodate BERDO compliance.

With respect to providing a summary of a proposed restructured agreement and consistent with our

recent discussions, MATEP and LEP would welcome the opportunity to attend the March 9, 2022 LMEC Board of Directors Virtual Meeting to provide a more detailed presentation and engage in discussions on the commercial and technical aspects of the "Partnership for a Zero Carbon Energy Future" heat recovery chiller proposal, initially presented to LMEC at the December 2, 2021 meeting of the Energy Steering Committee. As you may recall, during that meeting, MATEP and LEP described technical and analytical efforts undertaken throughout calendar year 2021 to review potential BERDO compliance approaches that MATEP and LMEC could pursue together.

Those efforts included the involvement of a global team of ENGIE subject matter experts on District Heating and Cooling Systems and Decarbonization Solutions who performed pre-engineering and data analysis. Based on the analysis done to date, MATEP envisions an initial proposal entailing installation of electric drive heat recovery chillers and hot water distribution piping. If undertaken, the project would be expected to result a substantial reduction in CO2 and would provide an added benefit of chilled water capacity gains.

As part of this process, the ENGIE engineering group working with MATEP and LEP has also requested that we begin to work with LMEC on scheduling visits to the Member Institutions to better refine the technical design of the project. I look forward to working with you and the LMEC Member Institutions to schedule those visits at our mutual earliest convenience and in close proximity to the LMEC Board meeting on March 9th.

MATEP appreciates LMEC's interest in working cooperatively to resolve the near-term issues and developing innovative long-term solutions for sustainability and carbon reduction together.

Should you have any questions on these matters, please do not hesitate to contact me.

Sincerely,

Joe Dalton

Joe Dalton
President & CEO

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") dated as of February __, 2022, is between MATEP LLC ("MATEP") and each of the User Institutions (collectively, the "Users" or the "Customers") under the Amended Utilities Contracts dated as of October 1, 2015 (the "AUC" or "AUCs") (collectively, MATEP and the Users are referred to herein as the "Parties").

BACKGROUND

A. All capitalized terms used herein and not otherwise defined shall have the meanings in the AUC.

B. On April 28, 2021, Longwood Medical Energy Collaborative, Inc. ("LMEC") delivered to MATEP a "Notice of Designation of "References Prices" for Electricity under the AUCs" in which LMEC asserted, notwithstanding MATEP's objections, that the Users had unilaterally "designated … the Reference Price" for the MOU Service Period (the "LMEC Notice").

C. Based on, among other things, MATEP's contention that the AUCs require the Parties to mutually agree upon such References Prices, including the process of establishing the reference price for electricity under Section 5(a) of the AUC, MATEP has objected to and has not accepted the Users' unilateral assertion of the "Reference Prices" identified in the LMEC Notice.

D. The Users and MATEP now desire to mutually agree to the reference standard for Electricity pricing under Section 5(a) of the AUC for each of (a) calendar year 2022 (*i.e.,* for the period from January 1, 2022 through to and including December 31, 2022) and (b) calendar year 2023 (*i.e.,* for the period from January 1, 2023 through to and including December 31, 2023) ((a) and (b) together, the "MOU Service Period") without prejudice to either MATEP or the Users with respect to any claims, positions or interpretations under the AUCs now or in the future, except with respect to the new reference price for Electricity during the MOU Service Period, as described herein.

E. The Users and MATEP are entering into this MOU to set out their mutual understandings and each of the parties hereby confirms that the respective undertakings set forth herein are adequate consideration for this MOU.

AGREEMENT

1. Electricity Reference Standard Price. The Parties hereby agree that the "reference standard" price for purposes of Section 5(a)(ii) of the AUCs during the MOU Service Period shall be the sum of (a) the Designated Price *plus* (b) the Reliability / Firmness Adder.

"Designated Price" means: (i) for calendar year 2022, $0.08709/kWh, which is the same as the price identified in as the "Contract Price" under the 2022 4BC First Point Supply Agreement; and (ii) for calendar year 2023, $0.08239/kWh, which is the same as the price identified in as the "Contract Price" under the 2023 4BC First Point Supply Agreement.

"2022 4BC First Point Supply Agreement" means the Electricity Sales Agreement dated as of April 28, 2021, by and between First Point Power, LLC ("First Point") and 4BC Unit A Lessee MA, LLC ("4BC"), including the Terms of Service and all other attachments thereto, pursuant to which First Point is to supply energy and other services to 4BC during calendar year 2022. A copy of the 2022 4BC First Point Supply Agreement is attached to this MOU as Exhibit A.

"2023 4BC First Point Supply Agreement" means the Electricity Sales Agreement dated as of April 28, 2021, by and between First Point and 4BC, including the Terms of Service and all other attachments thereto, pursuant to which First Point is to supply energy and other services to 4BC during calendar year 2023. A copy of the 2023 4BC First Point Supply Agreement is attached to this MOU as Exhibit B.

"Reliability / Firmness Adder" means $[27.75] / MWh, which reflects the value of the Reliability of MATEP's firm service to the Users during the MOU Service Period, which the Parties acknowledge and agree is a unique attribute of MATEP's level of service provided to the Users, is a necessary component in determining the comparability of MATEP's service required to be provided by MATEP under the AUCs compared to the services provided by Suppliers in the competitive market, cannot be supplied by third party competitive electricity suppliers ("Suppliers") such as First Point and is not susceptible of being included in the Designated Price or reflected in such Supplier's supply price bids or provided pursuant to the 2022 4BC First Point Supply Agreement or the 2023 4BC First Point Supply Agreement.

"Reliability" means the MATEP Plant's enhanced capability, redundancy and operational reliability and continuous delivery of electric power even under adverse conditions, such as storms or outages of generation or transmission lines, including, without limitation, the obligation to deliver firm supply, maintain amperage over tie lines serving the Users and MATEP's commitment to pay liquidated damages as security for such reliability commitments.

2. No Effect on AUC; Status of MOU. Each of MATEP and the Users confirm and agree that this MOU shall not serve to modify or amend the AUCs and shall only apply to the terms specifically covered in this MOU. The Users and MATEP are not agreeing to a permanent modification of the AUCs and reserve the right to return to the provisions of the AUCs, without modification by this MOU, for any period following the MOU Service Period. This MOU shall not affect any other outstanding matters under the AUCs, or serve to relieve any Party of its respective obligations under the AUCs. The Parties further acknowledge and agree that this MOU is an agreement binding solely on the Parties and that the 2022 4BC First Point Supply Agreement and the 2023 4BC First Point Supply Agreement are agreements biding solely upon 4BC and First Point. Notwithstanding the Parties' agreement to incorporate or reference terms from the 2022 4BC First Point Supply Agreement and the 2023 4BC First Point Supply Agreement, the exercise, performance, breach, default, or waiver by 4BC or First Point of any of their respective rights and obligations thereunder, including without limitation any course of performance or dispute between 4BC and First Point, shall in no way affect the Parties' rights or obligations under the AUCs or this MOU, nor shall any amendment of the 2022 4BC First Point Supply Agreement or the 2023 4BC First Point Supply Agreement.

3. Miscellaneous. All notices, requests, demands and other communications under this MOU shall be in writing and shall be delivered to all Users in the manner specified in Section 18

of the AUC, with a simultaneous copy to LMEC. The provisions of this MOU and information exchanged between the Parties shall be kept confidential in the manner provided in Section 24 of the AUC. The parties acknowledge and agree that each of the Users has separately authorized LMEC to act as the agent for each of the Users, provided that LMEC shall not thereby become a party to this MOU.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this MOU as of the ___ day of February, 2022.

MATEP LLC

By: _____
Its: _____
Hereunto Duly Authorized

USER INSTITUTIONS:

By: **Longwood Medical Energy Collaborative, Inc.**, duly authorized to sign on behalf of:

Beth Israel Deaconess Medical Center, Inc.
Brigham & Women's Hospital, Inc.
The Children's Hospital Corporation
Dana-Farber Cancer Institute, Inc.
Harvard Medical School
Harvard School of Public Health
Joslin Diabetes Center, Inc.

By: _____
Its: _____
Hereunto Duly Authorized

EXHIBIT 10

Longwood Medical Energy Collaborative

February 28, 2022

Joe Dalton, President & CEO
MATEP, LLC
474 Brookline Avenue
Boston, MA 02215

Re: Notice of Dispute and Initiation of Dispute Resolution Process under the AUCs – MATEP Imposition of a Reliability/Firmness Adder

Dear Joe,

Reference is made to the Amended Utilities Contract (each, an "AUC," and collectively, the "AUCs"), dated as of September 30, 2015, between MATEP, LLC ("MATEP") and each of the User Institutions (each an "Institution", and collectively, the "Institutions"). Capitalized terms used and not defined herein shall have the meaning set forth in the AUC.

Background

On April 28, 2021, the Longwood Medical Energy Collaborative, Inc. ("LMEC") (acting on behalf of the Institutions) notified MATEP that the Institutions, pursuant to Section 5(a)(ii) of the AUC, were designating a new reference standard for the price of Electricity under the AUC (such price, the "Reference Price") for calendar years 2022 and 2023. On January 26, 2022, MATEP formally notified LMEC that MATEP does not accept that designation and intends to invoice the Institutions for Electricity at a different price. A copy of MATEP's notice (the "Notice") is attached hereto as Exhibit B.

As a basis for its position, MATEP alleges that (1) the electric sales agreements ("ESAs") on which the Reference Price designated by the Institutions is based do not adequately reflect the "comparable level of service" standard that is required under Section 5(a)(ii) of the AUC, and (2) even if the ESAs met this standard, the Institutions do not have authority under Section 5(a)(ii) to designate a Reference Price without MATEP's consent.

Instead, MATEP argues that any Reference Price designated by the Institutions should only "serve as a base to which a Reliability/Firmness Adder can be combined in order to arrive at a mutually agreeable Reference Standard Price." To accomplish this, MATEP has requested that the Institutions execute a new memorandum of understanding (the "New Agreement") (a copy of which is included in Exhibit B) in which the Parties would establish the new "Reference Standard Price" (the "New Price") for the price of Electricity. MATEP has proposed that the Parties utilize the analysis prepared on MATEP's behalf by Charles River Associates (the "CRA Analysis") to establish this New Price.

MATEP has demanded the Institutions execute the New Agreement by February 28, 2022. If the Institutions fail to do so, MATEP states that it unilaterally will establish the New Price by including in its invoices to the Institutions for Electricity a "Reliability/Firmness Adder at the [CRA] calculated 'Base Case' rate of $27.75/MWh effective as of January 1, 2022."

Notification of Dispute

On behalf of each Institution, this letter provides formal notice to MATEP of a Dispute pursuant to Section 15 of the AUC, and requests that the Dispute be resolved in accordance with the Escalation Procedures set forth in the AUC. A detailed summary of the Institutions' basis for Disputing MATEP's Reliability/Firmness Adder is set forth in Exhibit A.

The Institutions have properly designated a Reference Price for calendar years 2022 and 2023 in accordance with the provisions of Section 5(a)(ii) of the AUC. As has been the case since 1998, an ESA which delivers electricity on a "firm, full requirements" basis satisfies the "comparable level of service" requirement in Section 5(a)(ii).

The AUC does not require the Institutions to obtain MATEP's consent for their designation of a Reference Price. Rather, Section 5(a)(ii) establishes an objective standard – whether "in the absence of th[e] Amended Utilities Contract" the Institutions "individually or through intermediaries, could contract for and obtain delivery of alternative supplies of electricity under firm (non-interruptible) agreements" – for the designation a Reference Price. The Institutions' designation has met that standard.

MATEP's demand that the Institutions either now agree to pay, or have MATEP unilaterally impose, a Reliability/Firmness Adder on the Reference Price has no basis under the AUC, directly contradicts the last twenty years of dealings between the Parties, and completely ignores the prior litigation and resultant judicial decisions in which this issue was addressed. In effect, MATEP's demand would nullify the provisions of Section 5(a)(ii), and replace them with a new, extra-contractual requirement that has no nexus to the AUC. As such, the Institutions reject MATEP's demand, and initiate the Dispute Resolution process in Section 15 of the AUC.

Sincerely,

THE INSTITUTIONS

By: Longwood Medical Energy Collaborative, Inc.,
Duly authorized to sign on behalf of:

Beth Israel Deaconess Medical Center, Inc.
Brigham & Women's Hospital, Inc.
The Children's Hospital Corporation
Dana-Farber Cancer Institute, Inc.
Joslin Diabetes Center, Inc.
The President and Fellows of Harvard College

Its: President & Executive Director
Hereunto Duly Authorized

EXHIBIT A

Basis for Dispute

The Institutions have properly designated a Reference Price for calendar years 2022 and 2023 in accordance with the provisions of Section 5(a)(ii) of the AUC. As has been the case since 1998, an ESA which delivers electricity on a "firm, full requirements" basis satisfies the "comparable level of service" requirement in Section 5(a)(ii). The AUC sets forth an objective standard that does not require the Institutions to obtain MATEP's consent for their designation of a Reference Price. The Institutions' designation has met that standard.

MATEP's demand that the Institutions either now agree to pay, or have MATEP unilaterally impose, a Reliability/Firmness Adder on the Reference Price has no basis under the AUC, directly contradicts the last twenty years of dealings between the Parties, and completely ignores the prior litigation and resultant judicial decisions in which this issue was addressed. In effect, MATEP's demand would nullify the provisions of Section 5(a)(ii), and replace them with a new, extra-contractual requirement that has no nexus to the AUC.

The AUC

Pursuant to Section 5 of each AUC, each Institution agreed to pay MATEP, on a monthly basis, a Utility Charge equal to the sum of the charges for electricity, steam and chilled water (each of which is determined in accordance with the provisions of Section 5).

Section 5(a)(i) of each AUC establishes the process for determining the Electricity Charge, which initially is equal to "the dollar amount that the [Institution] would have been required to pay to Eversource had the [Institution] acquired electricity from that source instead of from the Plant. However, Section 5(a)(ii) then establishes that:

> Consistent with the comparability principle set forth in subsection 1(c), the "applicable rate schedule" described in subsection 5(a)(i) shall be construed to mean Eversource's "G-3" filed tariff (or, if such tariff is no longer effective, the successor tariff most closely approximating the "G-3" tariff); provided, that:
>
> (A) when a competitive market arises in which alternative supplies of electricity at comparable levels of service with specifications and reliability standards at least equal to those provided in this Amended Utilities Contract are actually available (such that, in the absence of this Amended Utilities Contract, the User, individually or through intermediaries, could contract for and obtain delivery of alternative supplies of electricity) under firm (non-interruptible) agreements, and delivery to the User of such alternative supplies is not prohibited by law, then
>
> (B) the new reference standard shall be the price, from time to time, of such alternative supplies; provided, further that such new reference standard shall include (without duplication)

> appropriate charges for applicable transmission and distribution costs and other costs (e.g., "stranded costs") associated with the re-structuring of the electricity market in Massachusetts as such transmission and distribution costs and other costs are charged to customers comparable to the User located in Eversource's service territory.

Section 1(a) of the AUC establishes that a reliable supply of Electricity is critical to each Institution, and therefore requires MATEP (except to the extent prevented by a breach by an Institution of its material obligations under the AUC or by Force Majeure) to "provide continuous delivery" of the Institution's requirements for Electricity "7 days a week, 24 hours a day" (*i.e.,* on a "firm, full requirements" basis). Under Section 1(c) of the AUC, MATEP is required to provide that Electricity "on the basis of pricing comparable to the pricing available in a competitive market for levels of service comparable to that required to be provided by MATEP" under the AUC (that is, the delivery of electricity by a competitive electricity supplier on a "firm, full requirements" basis).

The Initial Designation of the Reference Price by the Institutions

The Institutions first designated a Reference Price for Electricity in 1998 when they selected the price proposed by PECO Energy Company ("PECO") under the Power Options Program created by the Massachusetts Health and Education Facilities Authority.[1] At that time, a competitive electricity supply market had just become established in Massachusetts pursuant to the *Electric Restructuring Act of 1998*.

In a series of meetings that occurred in early 1998, the Institutions requested that MATEP acknowledge the designation by the Institutions of the price in the PECO proposal as the Reference Price. In response, MATEP expressed concerns about whether the PECO proposal met the "comparability conditions" of the RUC; that is, MATEP

> was concerned about whether the PECO proposal was a "real deal," meaning: was PECO actually going to provide electricity, or was it just a financial scheme? And, if PECO was truly going to supply electricity, would it be supplied in a manner comparable to that supplied to [the Institutions] by MATEP?[2]

Faced with these concerns, the Institutions and MATEP negotiated a letter agreement that established a simple test – whether electricity actually was delivered by PECO – to determine if the PECO proposal was the "real deal" or merely a "financial deal."[3] Because the Massachusetts General Hospital, New England Medical Center and St. Elizabeth's Hospital had also agreed to

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[1] Although that designation was made by the Institutions pursuant to the Third Amendment to the Restated Utilities Contract (the "RUC", which was the predecessor contract to the AUC), dated as of October 31, 1997, the Institutions note the relevant provisions of the RUC and AUC are identical in all material respects.

[2] *See Beth Isr. Deaconess Med. Ctr. v. Matep, 2001 Mass. Super. LEXIS 409 (2001), at *6-7.*

[3] *Id.* at *7. As the court

purchase electricity under the PECO proposal, any remaining concerns of MATEP that were related to "comparability" (other than concerning actual delivery) were ameliorated.[4]

A series of disputes then arose between the Institutions and MATEP as to whether the specific provisions of the negotiated letter agreement concerning "actual delivery" had been satisfied, as well as the extent to which the price for electricity in the PECO proposal applied to both Electricity and Chilled Water under the RUC.[5] Those disputes ultimately were resolved after litigation in favor of the Institutions.

Distilling those disputes and the resultant judicial decisions to their essence, a contract for alternative supplies of electricity in the competitive electricity market is "comparable" for the purposes of Sections 1(a), 1(c), and 5(a)(ii) of the AUC if that electricity is actually delivered to the purchaser on a "firm, full requirements" basis.[6] As discussed below, that is the case here under the relevant First Point Power ("FPP") ESAs. Given the prior litigation that addressed this issue in favor of the Institutions, as well as the over twenty years of subsequent practice between the Parties on this issue, the Institutions do not understand how MATEP can argue otherwise.[7]

Designation of the Reference Price for CY 22 and CY 23

In early 2021, the Institutions informed MATEP that the current owner of the building commonly known as "4 Blackfan" (f/k/a the Harvard Institute of Medicine, or "HIM," which formerly was owned by Harvard Medical School, or "HMS," and which is still substantially occupied by HMS and other Institutions) intended to conduct a competitive solicitation for the procurement of electricity in April 2021, and that the Institutions intended to use that solicitation for the purpose of designating a Reference Price under the AUC for calendar year 2022 (and potentially 2023). The "4 Blackfan" building was first used by the Institutions in 2001 for the purpose of soliciting competitive electricity supply proposals and designating a Reference Price under the AUC, as it had (and continues to have) load characteristics comparable to that of the Institutions.

Consistent with prior years, the Institutions proposed that the solicitation for calendar year 2022 (and potentially 2023) would utilize the process previously agreed upon by the Institutions and MATEP, including the requirement that any electricity purchased from a competitive supplier be delivered to "4 Blackfan" on a "firm, full requirements" basis (which satisfied the "comparability" requirements in Sections 1(a), 1(c) and 5(a)(ii) of the AUC). The Institutions also invited MATEP to negotiate and execute a memorandum of understanding, which would govern the solicitation process and any subsequent designation by the Institutions

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[4] *Id.*

[5] An overview of that litigation is provided by Justice Allan van Gestel in *Beth Israel Deaconess Medical Center v. MATEP, LLC*, 2005 Mass. Super. LEXIS 292* (2005).

[6] *See Beth Isr. Deaconess Med. Ctr. v. Matep, 2001 Mass. Super. LEXIS 409 (2001), at *12, *15, *20.*

[7] In its Notice, MATEP appears to argue that "significantly higher than anticipated costs associated with unplanned maintenance," as well as project costs associated with at least one major capital upgrade that MATEP alleges are associated with inadequate transparency during pre-transaction and transition diligence, justify the imposition of the Reliability/Firmness Adder. The AUC contains no recognition of these factors in connection with the designation of the Reference Price. As such, these arguments are not relevant to the designation of the Reference Price and are not addressed herein.

of a Reference Price, and which would be based on the memorandum of understanding that was executed and implemented by the Parties for the calendar year 2021 solicitation.

On April 15, 2021, MATEP declined to enter into the memorandum of understanding proposed by the Institutions, and instead requested that the competitive solicitation process be revised to require competitive suppliers to submit proposals based on the following proposed "Reliability/Firmness" rider:

> "Reliability / Firmness" means a binding contractual obligation by a Supplier to: (a) provide to 4BC during the MOU Service Period firm, continuous electricity supply delivered to 4BC's electric meter(s) at the building known as "4 Blackfan" (the "Delivery Point") on a continuous basis even under adverse conditions, such as storms or outages of generation, distribution and/or transmission lines, up to and including the Delivery Point; (b) contract directly with one or more generators to procure such firm, continuous supply (or otherwise arrange for onsite backup generation) over the MOU Service Period; and (c) pay to 4BC Liquidated Damages (as defined below) in the event of such Supplier's failure to deliver such firm, continuous electricity supply, notwithstanding that such failure is due to events of force majeure unless such events of force majeure render the electric distribution system located within the neighborhood in the City of Boston known as the Longwood Medical Area in which 4 Blackfan and the Users' premises are located unavailable for electric distribution due to force majeure other than improper amperage on such electric distribution system.
>
> "Liquidated Damages" means a payment, stipulated to be liquidated damages and not a penalty, payable by Supplier to 4BC for each hour Supplier fails to provide firm, continuous electricity supply to 4BC after the third hour of any such failure in an amount not less than the following: for hours 4 through to but not including 10: $810/hour; for hours 10 through to but not including 40: $2,430/hour; for hours 40 through to but not including 58: $3,240/hour; and for additional hours or part thereof: $8,102/hour.

In light of the unambiguous provisions in the AUC and the prior twenty year history of the Parties with respect to the designation of a Reference Price, the Institutions informed MATEP that they would decline MATEP's request that the solicitation for "4 Blackfan" be altered. The Institutions rightfully rejected that request, as it had no relevance to the AUC and would have required competitive suppliers to offer a price that had no nexus to the "competitive market."

As a result, the solicitation was conducted without a memorandum of understanding between MATEP and the Institutions. The Institutions nevertheless used a solicitation process that was equivalent in all material respects to the process agreed upon by MATEP and the Institutions for calendar year 2021 (and many preceding years). While the Institutions and MATEP have utilized a memorandum of understanding to guide the solicitation process in many (but not all) of the preceding years, there is no requirement in the AUC (as MATEP erroneously claims) that they do so. Rather, Section 5(a)(ii) of the AUC establishes an objective standard – whether "in the absence of th[e] Amended Utilities Contract" the Institutions "individually or

through intermediaries, could contract for and obtain delivery of alternative supplies of electricity under firm (non-interruptible) agreements" – for the designation of a Reference Price.

On April 28, 2021, the Institutions subsequently notified MATEP that the owner of "4 Blackfan" had selected FPP to supply electricity to 4 Blackfan on a firm, full requirements basis for calendar years 2022 and 2023 under the FPP ESAs, and that the Institutions designated the price in the FPP ESAs as the Reference Price under the AUC for calendar years 2022 and 2023. Because the Institutions could have obtained delivery of electricity under the FPP ESAs on a firm, full requirements basis in the absence of the AUC, the Institutions met the objective standard for the designation of a Reference Price in Section 5(a)(ii). Accordingly, the Institutions properly utilized the FPP ESAs for the purpose of designating the Reference Price.

Proposed Resolution

The Institutions have properly designated a Reference Price for calendar years 2022 and 2023 in accordance with the provisions of Section 5(a)(ii) of the AUC. As has been the case since 1998, an ESA which delivers electricity on a "firm, full requirements" basis satisfies the "comparable level of service" requirement in Section 5(a)(ii). The AUC does not require the Institutions to obtain MATEP's consent for their designation of a Reference Price.

MATEP's demand that the Institutions either now agree to pay, or have MATEP unilaterally impose, a Reliability/Firmness Adder on the Reference Price has no basis under the AUC, contradicts the last twenty years of dealings between the Parties, and ignores the prior litigation and resultant judicial decisions in which this issue was addressed. In effect, MATEP's demand would – in violation of the canons of contract construction – nullify the provisions of Section 5(a)(ii) of the AUC, and replace them with a new, extra-contractual requirement that has no nexus to the AUC. As such, the Institutions reject MATEP's demand that the Institutions either execute MATEP's proposed New Agreement[8] or agree to MATEP's imposition of a Reliability/Firmness Adder,[9] and instead hereby initiate the Dispute Resolution process in Section 15 of the AUC.

Because the Reliability/Firmness Adder does not comprise part of the Electricity Charge (and thus the Utility Charge) that is owed by each Institution under the AUC, each Institution is legally entitled to withhold the amount of the Reliability/Firmness Adder that is unilaterally imposed on them without basis by MATEP. Notwithstanding that point, the Institutions hereby notify MATEP that payment by an Institution of the Reliability/Firmness Adder unilaterally imposed by MATEP is made under protest and subject to a full reservation of all of its rights under the AUC, at law and in equity, including the right to have the amount of any such payment refunded in full (with Interest) when the Institutions prevail in this Dispute.

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[8] MATEP claims in the Notice that the New Agreement will provide price certainty for the LMEC Institutions, and facilitate the performance of Cooling Tower and other improvements at the Plant by MATEP. The Institutions note that the AUC already provides adequate price certainty to the Institutions, and requires MATEP to maintain the Cooling Towers and the Plant at its own expense. As such, the Institutions believe that the execution of the New Agreement would not provide any additional benefits to the Institutions as MATEP has claimed.

[9] Because the imposition by MATEP of a Reliability/Firmness Adder on the Reference Price is not authorized under the AUC, the Institutions decline at this time to respond directly to MATEP's New Agreement or the CRA Analysis, other than to say they disagree with both.

EXHIBIT B

MATEP Notice

[See attached]

MATEP

Inadmissible Settlement Communication
Delivered by email

January 26, 2021

Gretchen May
President & Executive Director
Longwood Medical Energy Collaborative
164 Longwood Avenue
Boston, MA 02215

RE: CES-E Adjustment Dispute – STEP 2 Dispute Resolution Process

Dear Gretchen,

Thank you for your most recent written communication (December 8, 2021) on behalf of the LMEC Institutions in response to the discussion held among the parties (LMEC, MATEP, and LEP) on November 19, 2021 to further the effort of resolving the dispute regarding the Clean Energy Standard Expansion invoice adjustments. Like you, we appreciate that the session was open, thoughtful, and productive aimed at bringing the parties together to resolve near term issues while also providing a strong foundation to continue our collaborative work on innovative solutions to mutual long-term challenges.

To assist the LMEC Institutions in the evaluation of MATEP's offer to settle the CES-E dispute by having MATEP and the Institutions (on a collective basis) share equally in the amount of the proposed CES-E Adjustment, the LMEC Institutions have requested that MATEP provide further clarification on its intentions with respect to: 1) invoicing for a Reliability/Firmness Adder; and 2) present a term sheet or summary of MATEP's proposal for a "restructured agreement" to bring the parties into better alignment toward the creation of a more innovative and sustainable long-term energy future. For the avoidance of doubt, MATEP views these issues as entirely separate, and requests that its sincere and reasonable offer to resolve the CES-E dispute as described above be answered directly. In a further gesture of good faith, MATEP will nonetheless provide the additional information requested.

With respect to the Reliability/Firmness Adder, MATEP notes that the parties have not executed a Memorandum of Understanding establishing a reference price for electricity supply and strongly suggests we come together to execute an MOU. To that end, attached is a draft MOU for LMEC's review. As we have communicated previously, MATEP does not accept LMEC's unilateral designation of a reference price for calendar years 2022 and 2023. In verbal and written communications from as early as March 2021, MATEP has expressed its concerns that LMEC's designated reference price does

not adequately reflect the "comparable level of service" standard required under the Amended Utilities Contract (AUC). However, we do believe the LMEC designated price can serve as a base to which a Reliability/Firmness Adder can be combined in order to arrive at a mutually agreeable Reference Standard Price.

MATEP shared an initial analysis on the Reliability/Firmness Adder performed on its behalf by Charles River Associates (CRA) on August 31, 2021, and then shared a more detailed version of the analysis in a meeting between the Boards of Directors of LMEC and Longwood Energy Partners (LEP) on November 10, 2021. Under CRA's "Base Case" scenario, the calculated reliability adder was $27.75/MWh. Additional scenarios were examined with a calculated reliability adder ranging from $9.60/MWh in a "Low Flex Case" to $54.16/MWh in a "High Flex Case." The discussion on November 10 was candid and forthright regarding the significantly higher than anticipated operating costs confronting MATEP associated with unplanned maintenance and project costs stemming from inadequate transparency during pre-transaction and transition diligence on at least one major capital upgrade. These unanticipated projects have resulted in substantially higher proposed CAPEX budgets for the next three to five years.

Given the urgent need to address these issues, during the November 10, 2021 meeting MATEP indicated its intention to invoice for the Reliability/Firmness Adder beginning on January 1, 2022. That remains MATEP's intention. However, in the hope that we can continue our open and cooperative dialogue from the November 19 meeting among the parties, MATEP proposes to do so in the following manner:

1) MATEP proposes the parties work expeditiously and in good faith to execute an MOU, a draft of which is attached, to establish a mutually agreed upon reference standard price for electricity supply for calendar years 2022 and 2023 that includes, for each year of the MOU, the sum of the LMEC-designated First Point Power price, and an agreed upon rate for the Reliability/Firmness Adder within the range as calculated in the CRA analysis. To provide price certainty over the next two years, this MOU does not contemplate any additional price adjustments due to market changes, course of performance, or First Point/4BC invoice adjustments – the price included in the executed MOU will reflect the final price for calendar years 2022 and 2023 respectively. An agreed upon rate should be determined and a final MOU should be executed no later than February 28, 2022.

2) MATEP will include the "Reliability/Firmness Adder" description as a line item on January invoices but will not assess a charge on that invoice to allow for good faith discussions to proceed. The agreed upon rate established in the executed MOU will be effective as of January 1, 2022. February 2022 invoices will include an adjustment for January 2022 volumes charged at the agreed upon rate.

3) In the event MATEP and the LMEC Institutions do not execute an MOU by February 28, 2022, MATEP will invoice the Reliability/Firmness Adder at the calculated "Base Case" rate of $27.75/MWh effective as of January 1, 2022.

Executing an MOU for the period covering calendar years 2022 and 2023 will provide price certainty for the LMEC Institutions, facilitate Cooling Tower and other improvements at MATEP, and allow the parties to focus significant collaborative time and attention on contractual restructuring to better accommodate BERDO compliance.

With respect to providing a summary of a proposed restructured agreement and consistent with our

recent discussions, MATEP and LEP would welcome the opportunity to attend the March 9, 2022 LMEC Board of Directors Virtual Meeting to provide a more detailed presentation and engage in discussions on the commercial and technical aspects of the "Partnership for a Zero Carbon Energy Future" heat recovery chiller proposal, initially presented to LMEC at the December 2, 2021 meeting of the Energy Steering Committee. As you may recall, during that meeting, MATEP and LEP described technical and analytical efforts undertaken throughout calendar year 2021 to review potential BERDO compliance approaches that MATEP and LMEC could pursue together.

Those efforts included the involvement of a global team of ENGIE subject matter experts on District Heating and Cooling Systems and Decarbonization Solutions who performed pre-engineering and data analysis. Based on the analysis done to date, MATEP envisions an initial proposal entailing installation of electric drive heat recovery chillers and hot water distribution piping. If undertaken, the project would be expected to result a substantial reduction in CO2 and would provide an added benefit of chilled water capacity gains.

As part of this process, the ENGIE engineering group working with MATEP and LEP has also requested that we begin to work with LMEC on scheduling visits to the Member Institutions to better refine the technical design of the project. I look forward to working with you and the LMEC Member Institutions to schedule those visits at our mutual earliest convenience and in close proximity to the LMEC Board meeting on March 9th.

MATEP appreciates LMEC's interest in working cooperatively to resolve the near-term issues and developing innovative long-term solutions for sustainability and carbon reduction together.

Should you have any questions on these matters, please do not hesitate to contact me.

Sincerely,

Joe Dalton

Joe Dalton
President & CEO

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") dated as of February __, 2022, is between MATEP LLC ("MATEP") and each of the User Institutions (collectively, the "Users" or the "Customers") under the Amended Utilities Contracts dated as of October 1, 2015 (the "AUC" or "AUCs") (collectively, MATEP and the Users are referred to herein as the "Parties").

BACKGROUND

A. All capitalized terms used herein and not otherwise defined shall have the meanings in the AUC.

B. On April 28, 2021, Longwood Medical Energy Collaborative, Inc. ("LMEC") delivered to MATEP a "Notice of Designation of "References Prices" for Electricity under the AUCs" in which LMEC asserted, notwithstanding MATEP's objections, that the Users had unilaterally "designated … the Reference Price" for the MOU Service Period (the "LMEC Notice").

C. Based on, among other things, MATEP's contention that the AUCs require the Parties to mutually agree upon such References Prices, including the process of establishing the reference price for electricity under Section 5(a) of the AUC, MATEP has objected to and has not accepted the Users' unilateral assertion of the "Reference Prices" identified in the LMEC Notice.

D. The Users and MATEP now desire to mutually agree to the reference standard for Electricity pricing under Section 5(a) of the AUC for each of (a) calendar year 2022 (*i.e.,* for the period from January 1, 2022 through to and including December 31, 2022) and (b) calendar year 2023 (*i.e.,* for the period from January 1, 2023 through to and including December 31, 2023) ((a) and (b) together, the "MOU Service Period") without prejudice to either MATEP or the Users with respect to any claims, positions or interpretations under the AUCs now or in the future, except with respect to the new reference price for Electricity during the MOU Service Period, as described herein.

E. The Users and MATEP are entering into this MOU to set out their mutual understandings and each of the parties hereby confirms that the respective undertakings set forth herein are adequate consideration for this MOU.

AGREEMENT

1. Electricity Reference Standard Price. The Parties hereby agree that the "reference standard" price for purposes of Section 5(a)(ii) of the AUCs during the MOU Service Period shall be the sum of (a) the Designated Price *plus* (b) the Reliability / Firmness Adder.

"Designated Price" means: (i) for calendar year 2022, $0.08709/kWh, which is the same as the price identified in as the "Contract Price" under the 2022 4BC First Point Supply Agreement; and (ii) for calendar year 2023, $0.08239/kWh, which is the same as the price identified in as the "Contract Price" under the 2023 4BC First Point Supply Agreement.

"2022 4BC First Point Supply Agreement" means the Electricity Sales Agreement dated as of April 28, 2021, by and between First Point Power, LLC ("First Point") and 4BC Unit A Lessee MA, LLC ("4BC"), including the Terms of Service and all other attachments thereto, pursuant to which First Point is to supply energy and other services to 4BC during calendar year 2022. A copy of the 2022 4BC First Point Supply Agreement is attached to this MOU as Exhibit A.

"2023 4BC First Point Supply Agreement" means the Electricity Sales Agreement dated as of April 28, 2021, by and between First Point and 4BC, including the Terms of Service and all other attachments thereto, pursuant to which First Point is to supply energy and other services to 4BC during calendar year 2023. A copy of the 2023 4BC First Point Supply Agreement is attached to this MOU as Exhibit B.

"Reliability / Firmness Adder" means $[27.75] / MWh, which reflects the value of the Reliability of MATEP's firm service to the Users during the MOU Service Period, which the Parties acknowledge and agree is a unique attribute of MATEP's level of service provided to the Users, is a necessary component in determining the comparability of MATEP's service required to be provided by MATEP under the AUCs compared to the services provided by Suppliers in the competitive market, cannot be supplied by third party competitive electricity suppliers ("Suppliers") such as First Point and is not susceptible of being included in the Designated Price or reflected in such Supplier's supply price bids or provided pursuant to the 2022 4BC First Point Supply Agreement or the 2023 4BC First Point Supply Agreement.

"Reliability" means the MATEP Plant's enhanced capability, redundancy and operational reliability and continuous delivery of electric power even under adverse conditions, such as storms or outages of generation or transmission lines, including, without limitation, the obligation to deliver firm supply, maintain amperage over tie lines serving the Users and MATEP's commitment to pay liquidated damages as security for such reliability commitments.

2. No Effect on AUC; Status of MOU. Each of MATEP and the Users confirm and agree that this MOU shall not serve to modify or amend the AUCs and shall only apply to the terms specifically covered in this MOU. The Users and MATEP are not agreeing to a permanent modification of the AUCs and reserve the right to return to the provisions of the AUCs, without modification by this MOU, for any period following the MOU Service Period. This MOU shall not affect any other outstanding matters under the AUCs, or serve to relieve any Party of its respective obligations under the AUCs. The Parties further acknowledge and agree that this MOU is an agreement binding solely on the Parties and that the 2022 4BC First Point Supply Agreement and the 2023 4BC First Point Supply Agreement are agreements biding solely upon 4BC and First Point. Notwithstanding the Parties' agreement to incorporate or reference terms from the 2022 4BC First Point Supply Agreement and the 2023 4BC First Point Supply Agreement, the exercise, performance, breach, default, or waiver by 4BC or First Point of any of their respective rights and obligations thereunder, including without limitation any course of performance or dispute between 4BC and First Point, shall in no way affect the Parties' rights or obligations under the AUCs or this MOU, nor shall any amendment of the 2022 4BC First Point Supply Agreement or the 2023 4BC First Point Supply Agreement.

3. Miscellaneous. All notices, requests, demands and other communications under this MOU shall be in writing and shall be delivered to all Users in the manner specified in Section 18

of the AUC, with a simultaneous copy to LMEC. The provisions of this MOU and information exchanged between the Parties shall be kept confidential in the manner provided in Section 24 of the AUC. The parties acknowledge and agree that each of the Users has separately authorized LMEC to act as the agent for each of the Users, provided that LMEC shall not thereby become a party to this MOU.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this MOU as of the ___ day of February, 2022.

MATEP LLC

By: _____
Its: _____
Hereunto Duly Authorized

USER INSTITUTIONS:

By: **Longwood Medical Energy Collaborative, Inc.**, duly authorized to sign on behalf of:

Beth Israel Deaconess Medical Center, Inc.
Brigham & Women's Hospital, Inc.
The Children's Hospital Corporation
Dana-Farber Cancer Institute, Inc.
Harvard Medical School
Harvard School of Public Health
Joslin Diabetes Center, Inc.

By: _____
Its: _____
Hereunto Duly Authorized

EXHIBIT A

2022 4BC First Point Supply Agreement

[See attached]

EXHIBIT B

2023 4BC First Point Supply Agreement

[See attached]

EXHIBIT 11

MATEP

May 31, 2023

Via Email

Gretchen May
President & Executive Director
Longwood Medical Energy Collaborative, Inc.
375 Longwood Avenue
Boston, MA 02215

Re: Response to First, Second and Third Notices of Partial Designation of "Reference Prices" for Electricity under the AUCs for Calendar Years 2024, 2025 and 2026

Dear Gretchen:

MATEP is in receipt of your notices dated October 26, 2022, February 3, 2023, and April 28, 2023 ("the Notices"), in which LMEC purports to unilaterally designate the new reference standard (the "Reference Price") under the Amended Utilities Contract ("AUC") for Calendar Years 2024, 2025, and 2026. This letter rejects LMEC's unilateral designations contained in the Notices. Capitalized terms not defined herein are intended to have the meaning set forth in the AUC or in MATEP's April 7, 2022 Response to Notice of Dispute.

By now, the parties' positions are well known, and MATEP incorporates here by reference the arguments and objections set forth in MATEP's letter of February 22, 2023.

For nearly twelve months, MATEP has agreed to defer efforts to collect amounts LMEC owes in connection with the Reliability/Firmness Rider issues. MATEP agreed to that deferral in reliance upon LMEC's assurances that the parties could and would work together in good faith to reach a resolution of their disputes.

Regrettably, LMEC did not engage in a constructive effort to use its participation in the Global Solutions Working Group to help achieve a mutually acceptable resolution of our dispute or offer any substantive feedback on the decarbonization alternatives proposed by the MATEP team. Despite numerous entreaties for LMEC to prepare its own analysis or positive vision for the future, so that we could co-develop a solution as we came together to do, LMEC concluded its self-described "listen and learn" phase by simply ending the effort to find common ground.

As the parties have not resolved their differences under the Letter Agreement of June 14, 2022, and Letter Agreement extension of December 20, 2022, MATEP will resume collection of the Reliability/Firmness Adder in the following manner:

- Accrued balances, as detailed on invoices and the updated monthly "ENGIE-MATEP LLC RELIABILITY/FIRMNESS ADDER TO BE INVOICED TOTAL" insert since June 2022, for the period June 2022 through May 2023 will be invoiced with interest on the May 2023 customer invoices delivered on or about June 5, 2023.
- The Reliability/Firmness Adder charge will thereafter be included on monthly invoices starting with the June 2023 invoice delivered on or about July 5, 2023.

In addition, pursuant to Section 15(a)(ii) of the AUC at Step 3, MATEP hereby informs LMEC that today MATEP will refer the dispute to JAMS, Inc. to conduct a non-binding mediation. Please advise if there are mediators that you would like us to consider. Absent receipt of suggested mediators or if suggested mediators are not acceptable to us, we will follow the process set forth in the AUC to send a list of five mediators consistent with the contractual timetables.

MATEP remains open to the possibility of working cooperatively to resolve these issues, but to date has unfortunately not seen the necessary good faith from LMEC. If LMEC's posture has changed and LMEC desires to truly engage in dispute resolution efforts, please do not hesitate to contact me.

Sincerely,

Joe Dalton
President & CEO

EXHIBIT 12

Harvard Medical School & Affiliated Hospitals are powered by ENGIE

PEOPLE

+2.4 Million

patients well-served annually

ENERGY

24/7

available without fail

In Boston, ENGIE signed a 35-year energy supply and utility services agreement with Longwood Medical Energy Collaborative (LMEC), which plans and coordinates the energy services needs of Harvard Medical School and five affiliated hospitals and research institutions.

Delivered in partnership with Axium Infrastructure, the agreement comprises an electricity microgrid and a district heating and cooling network. ENGIE's services are enabling LMEC's member hospitals and research centers to focus on their missions of patient care and advancements in medicine. Future sustainable energy service enhancements may include solar energy, energy storage, and facilities management.

ENGIE's Partnered Approach

ENGIE and its development partner Axium Infrastructure created the Longwood Energy Partnership (LEP) and are working with LMEC to align the need for safe, reliable, and resilient energy delivery with forward-looking sustainability goals. The partners also recognize, that while each LMEC entity is unique, the collaborative would be better served with a systematic, rather than a case-by-case, approach to utility infrastructure and delivery, as it would enhance efficiency and improve responsiveness. (This has been especially important during the COVID-19 pandemic.)
The approach was jointly conceived by LMEC and LEP, and is being developed through regular meetings between ENGIE operations and maintenance personnel and the LMEC Board of Directors and Energy Steering Committee.

The Solution

Under a 35-year agreement (through 2051), LEP will provide central plant management for LMEC's six main medical facilities. Utility services under the agreement include a microgrid and a 112-million-square-foot district heating and cooling network that serves 74 buildings. The microgrid and district energy system have the capacity to produce 99 MW of electricity, 1,100,000 lbs/hr of steam, and 42,000 tons of chilled water.

The agreement covers operations, procurement, and risk management of power and gas systems. It also includes performance guarantees during outages or failures for 450 GWh of power, 5 bcf of natural gas, and other commodities.

Opportunities exist for future sustainability improvements through investments in solar energy, energy storage, and facilities management.

The Results

The district heating and cooling networks provide LMEC with the most efficient, reliable, and cost-effective means of providing energy while improving sustainability. They are backed by ENGIE's risk management and performance guarantees, which give LMEC's member healthcare and researcher institutions peace of mind as they focus their efforts on world-class patient care and advances in medicine.

Longwood Medical and ENGIE are collaborating to further develop their long-term sustainability goals.

About Longwood Medical Energy Collaborative

LMEC is a non-profit body that coordinates and plans the energy needs for Harvard Medical School, Beth Israel Deaconess Medical Center, Boston Children's Hospital, Brigham & Women's Hospital, Dana Farber Cancer Institute, and Joslin Diabetes Center. Collectively, these institutions span 74 buildings, approximately 2,000 beds, and serve more than 100,000 inpatients and 2.4 million outpatients annually. In addition, the Harvard-affiliated hospitals conduct critical research that continues to provide medical breakthroughs.