|  |  |  |
| --- | --- | --- |
| **JUDICIAL COUNCIL STANDARD FORM OF AGREEMENT** rev Dec. 2019 | | |
|  |  | AGREEMENT NUMBER |
|  |  | **[Agreement number]** |
|  |  | FEDERAL EMPLOYER ID |
|  |  | **[@ Federal Employer ID] #]** |

1. This Master Retail Electricity Sales Agreement (the “Master Agreement”) together with the sales confirmation(s) (“Sales Confirmation(s)”), as applicable (collectively, the “Agreement”) is entered into and made by and between the **[ESP Name]** (“Seller”) and Judicial Council of California or Judicial Council, referred to as (“Buyer”). Seller and Buyer may be individually referred to as (“Party”) or collectively as (“Parties”). Pending the execution of a Sales Confirmation, Seller shall have the right, but not the obligation, to provide the delivery of retail Electricity (“Electricity”) to Buyer under this Agreement.

2. This term of this Master Agreement shall commence on **[XX, 2022]** (“the Effective Date”), and terminate on **[XX, 2028]**(“Expiration Date,” “Initial Term”). Buyer shall have the option, exercisable upon written notice, to extend this Master Agreement for two (2) additional periods of three (3) years each (“Subsequent Term(s)”). Subsequent Terms shall be authorized by written Notice given by Buyer. Sales Confirmation(s) must be authorized prior to the Expiration Date of this Master Agreement, no new Sales Confirmation(s) shall be authorized after the Expiration Date of this Master Agreement, and Sales Confirmation Term(s) (“Sales Confirmation Term(s)”) may not extend beyond the term of this Master Agreement. The Initial Master Agreement Term and any authorized Subsequent Terms shall be collectively referred to as the “Master Agreement Term.”

3. The Buyer will pay Seller under this Agreement for any usage (“Usage”) during the Sales Confirmation Term, at the amounts indicated in the Sales Confirmations. The sum of all Sales Confirmations shall be the total “Contract Amount.”

4. The purpose or title of this Agreement is: Master Retail Electricity Sales Agreement. *The purpose or title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.*

5. The parties agree that this Agreement, made up of this Coversheet (“Coversheet”), the appendixes listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

Appendix A – Direct Access Electricity Purchase Provisions

Appendix B – Sales Confirmation Process, and Invoicing and Payment Provisions

Appendix C – General Provisions

Appendix D – Defined Terms

Appendix E – Direct Access Electricity Purchase Request

Appendix F – Seller’s Proposal Form

Appendix G – Sample Sales Confirmation

Appendix H – Unruh Civil Rights Act and FEHA Certification

|  |  |
| --- | --- |
| **BUYER’S SIGNATURE** | **SELLER’S SIGNATURE** |
|  |  |
| **Judicial Council of California** | SELLER’S NAME *(if Seller is not an individual person, state whether Seller is a corporation, partnership, etc., and the state or territory where Seller is organized)*  **[Seller name]** |
|  |  |
| BY *(Authorized Signature)*  ? | BY *(Authorized Signature)*  ? |
|  |  |
| PRINTED NAME AND TITLE OF PERSON SIGNING  **[Name and title]** | PRINTED NAME AND TITLE OF PERSON SIGNING  **[Name and title]** |
| DATE EXECUTED  **[Date]** | DATE EXECUTED  **[Date]** |
|  |  |
| ADDRESS  **[Address]** | ADDRESS  **[Address]**  [Valid California CPUC ESP Number No.: @] |

**APPENDIX A**

Direct Access Electricity Purchase Provisions

1. Background and Purpose

**1.1** The Buyer has approximately 150 facilities that may become eligible to acquire electric services from alternative Electric Service Providers (“ESPs”), as that term is defined in Section 218.3 of the Public Utility Code, through the California Direct Access Program (“Direct Access”). As Buyer’s facilities are authorized to participate in the Direct Access program, the Buyer anticipates soliciting proposals from the pool of pre-qualified ESPs to provide Electricity to those authorized facilities. Thereafter, the Buyer may award Sales Confirmation(s) to the selected ESPs, to procure Electricity on an as needed basis for accounts transferred to Direct Access. Electricity for the Buyer is currently provided at various metered locations, throughout the State of California and the Buyer is currently registered in the Direct Access Lotteries with Pacific Gas and Electric (“PG&E”), Southern California Edison (“SCE”), and San Diego Gas & Electric Company (“SDG&E”). Historical load and billing information for any accounts that become available for transition to Direct Access will be included in the Appendix E, Direct Access Electricity Purchase Request that the Buyer will provide the Seller to initiate a service request.

**1.2** **Master Retail Electricity Sales Agreement**. The Seller may be assigned to provide Electricity at various facilities, as may arise, based on the location and nature of the Electricity required and the pricing, and resources of the Seller (each a “Project(s)”). Because the scope and number of Projects and tasks are unknown at the time of contract execution, this contract is known as Master Agreement. The initial term of this Master Agreement for these Projects will be for six (6) years.

**1.3** **Licensing.** All Sellers, employees or agents thereof, providing Electricity under this Master Agreement must have, at all times throughout the duration of their delivery of Electricity, all appropriate, valid license(s), registration(s), and certification(s) required under law to provide the services being performed, including but not limited to, a valid California Public Utility Commission (“CPUC”) ESP Number (“CPUC ESP Number”). Seller must be registered with the CPUC as set forth in the registration requirements as indicated on their website: [CPUC ESP Registration.](https://www.cpuc.ca.gov/General.aspx?id=3440)  Sellers who cease to maintain a valid CPUC ESP Number with the CPUC must immediately notify the Judicial Council. If the Buyer becomes aware that a Seller contracted to deliver Electricity no longer holds a valid CPUC ESP number, the Buyer will have the right to terminate the Agreement. The CPUC ESP Number is listed on the coversheet of this Agreement.

**1.4** **Modification of Agreement.**  Any alteration, deletion or addition to the Agreement shall be effective only if made in a written amendment executed by both Parties. No amendment or modification shall be made to this Agreement by course of performance, course of dealing or consumption of trade, or by the failure of a Party to object to a deviation from the terms of this Agreement.

**1.5 Severability.** If any provision of this Agreement is held to be invalid, its invalidity shall not affect the validity of any other provision of the Agreement.

1. Direct Access Electricity

**2.1** **Electricity Purchase.** The Buyer may purchase from Seller, Electricity to meet their Electricity requirements for the identified Electric Service Account(s) (“ESA(s)”) as specified in the applicable Sales Confirmation. The terms and conditions of the purchase and sale are set forth in this Master Agreement and in the Sales Confirmation. The Electricity purchased by the Buyer as a result of this Agreement will be delivered by the Transmission and Distribution Service Provider (“DSP”) to the Buyer’s corresponding ESA (the “Delivery Point”). Title to and risk of loss related to the Electricity shall transfer from Seller to Buyer at the Delivery Point. Buyer acknowledges and understands that the delivery of Electricity to Buyer’s ESA(s) will be accomplished exclusively by the DSP.

**2.2 Metering:** All measurement of Electricity delivered hereunder shall be and can only be provided by the DSP for each Delivery Point. Metered Usage (“Metered Usage”) shall be defined as the Metered Usage as reported by the DSP as recorded by revenue grade power meters as defined in the American National Standards Institute (“ANSI”) standard C12.20-2010 Class 0.2. Total usage (“Total Usage”) shall be defined as the Metered Usage plus the applicable transmission and distribution losses.

**2.3** **Switching:** Upon entering into a duly authorized Sales Confirmation, Seller shall use commercially reasonable efforts to effectuate a timely switch of Buyer’s ESA(s) to Seller. The Seller cannot guarantee that a switch of the Buyer’s ESA(s) will occur by a specific date. Seller shall not be liable for delays in this process caused by the DSP. The service start date (“Service Start Date”) shall be the date upon which a particular ESA is switched from the relevant DSP’s bundled services to Seller for Direct Access Retail Electric Service. Service Start Date shall commence once a Sales Confirmation has been duly authorized by the Buyer and the selected Seller. The Service Start Date on the Sales Confirmation shall be the date upon which the selected Seller begins provision of Direct Access Electricity Services. The Service Start Date will be referenced by the utility meter read occurring at 12:00 am (midnight) on or about the Start Date. Billing can not commence prior to the Service Start Date. The service end date (“Service End Date”) is typically the scheduled read date that occurs during the month and year identified as the End Date specified in the Sales Confirmation. Each ESA may have a separate Service Start Date and Service End Date.

**2.4 Service Guarantees:**

2.4.1 **Guarantee 1**:General Guarantee regarding Electricity Capacity Availability. The Seller guarantees that they will have sufficient Electricity generation capacity to provide the amount of Electricity set forth in a Sales Confirmation, for the duration agreed to by both parties. The Seller should have appropriate service agreements with all relevant DSP(s) to ensure reliable Electricity service. The Seller is not allowed to pass to the Judicial Council any CAL ISO penalties for under delivery of contracted power amounts.

2.4.2 **Guarantee 2:** Commencing Bill. The Seller will issue an accurate commencing bill to a new Buyer account within sixty (60) days of service initiation, or the Seller will automatically issue a one-time credit to the Buyer’s account in the amount of three hundred dollars ($300.00). The following are circumstances when Guarantee 2 does not apply:

2.4.2.1 Re-establishment of service following a shut-off for non-payment.

2.4.2.2 When access to the area or Buyer’s premises is not available on the mutually agreed upon date. .

2.4.2.3 Cases of mail theft or a clear failure on the part of the U.S. Postal Service to deliver the first bill in a timely manner. Seller must have documentation that notice was sent in a timely manner.

2.4.2.4 When the Buyer provides inaccurate information at the time of requesting service initiation.

2.4.2.5 Any major catastrophic event causing a disruption in transportation or communication within the DSP service territory. For example, an event on the order of the 1989 Loma Prieta Earthquake, the 1991 Oakland Hills Firestorm, or 2018 Camp Fire in Paradise, which prevents the Seller from either obtaining Buyer’s meter data in a timely fashion, or producing and/or delivering bills.

2.4.3 **Guarantee 3**: Service Termination in Error. Buyer will be eligible for a one thousand dollar ($1,000.00) credit adjustment if the Seller terminates service in error. The following scenario is eligible for Guarantee 3, Service Termination in Error:

2.4.3.1 Service interruptions due to an error in the Seller’s billing or meter reading processes when the Buyer has established service with the Seller or has taken all necessary steps to establish service with the Seller. The following are circumstances when Guarantee 3 does not apply:

2.4.3.1.1 Service interruptions to assure Buyer safety.

2.4.3.1.2 Service interruptions due to catastrophic events.

2.4.3.1.3 Service interruptions that last less than one (1) hour.

2.4.3.1.4 Service interruptions to repair or replace Seller’s electric facilities.

2.4.3.1.5 Service interruptions to diagnose the possibility of switched electric meters.

2.4.3.1.6 Service interruptions due to Buyer denying Seller access to service Buyer’s facilities, including electric meters.

2.4.4 Conditions not covered by the Seller’s Service Guarantee’s 1, 2, and 3 above in Section 2.4:

2.4.4.1 Public safety power shutoff events due to wildfire mitigation.

2.4.4.2 There is a declared emergency event or cause related to force majeure.

2.4.4.3 Access to the Buyer’s premises is not available or Buyer is not ready for service.

2.4.4.4 Buyer’s premises are deemed unsafe.

2.4.5 Seller Non-Compliance with Service Guarantees. The Buyer may terminate this Agreement, in whole or in part, immediately “for cause” if (i) Seller fails or is unable to meet its Service Guarantees as specified herein Appendix A, Section 2.4 and this failure is not cured within ten (10) days following Notice thereof.

**2.5** **Project Managers.** The Buyer’s project manager is the individual designated by the Buyer and named as Project Manager on an authorized Sales Confirmation. The Buyer may change its project manager at any time upon notice to Seller without need for an amendment to this Agreement. Seller’s project manager is the individual designated by the Seller and named as Project Manager on an authorized Sales Confirmation. Subject to written approval by the Buyer, Seller may change its project manager without need for an amendment to this Agreement.

**2.6 Resources.** Seller is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Electricity and to meet Seller's obligations under this Agreement.

**2.7 Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all Buyer-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Seller's own risk.

**END OF APPENDIX A**

APPENDIX B

Sales Confirmation Process, and Invoicing and Payment Provisions

1. **General.** Subject to the terms of this Agreement and the billing option agreed to in an executed Sales Confirmation, Seller shall directly invoice the Buyer, or invoice accordingly through the DSP (if DSP Consolidated Billing is agreed to). The Buyer will pay Seller under this Agreement for any Usage during the Sales Confirmation Term, following the provisions indicated in an authorized Sales Confirmation issued under this Agreement. Seller shall bear, and the Buyer shall have no obligation to pay or reimburse Seller for any and all other fees, costs, profits, taxes or expenses of any nature which Seller incurs.
2. **Sales Confirmation Amount.**

**2.1** Seller shall provide monthly invoices in arrears to the Buyer, indicating all charges incurred for Electricity delivered to the Buyer during the prior month. The Buyer shall be obligated to pay the Seller for the Electricity delivered under any individual Sales Confirmation, based on the agreed to schedule of rates set forth therein, multiplied by the Buyer’s monthly Metered or Total Usage for the ESA(s) indicated in Table 1. The pricing indicated in the Sales Confirmation schedule of rates, as defined in Tables 2 and 3 of an duly executed Sales Confirmation, shall be fully burdened and inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Seller for Services rendered to the Buyer.

**2.2** The amount the Buyer shall be obligated to pay to Seller under a Sales Confirmation (“Sales Confirmation Amount”) shall be based on actual Metered or Total Usage and the Sales Confirmation Rate, as specified in the Sales Confirmation. See Appendix G – Sample Sales Confirmation, and Appendix B, Section 5, Invoicing and Payment for additional detail.

**2.3** Seller will be authorized for the delivery of Electricity during the Sales Confirmation Term indicated in the Sales Confirmation(s).

**3.** **Sales Confirmation Authorization Process**

**3.1** The Buyer will authorize the delivery of Electricity and spending of funds under this Agreement only through the use of Sales Confirmation(s) entered into by the Seller and the Buyer. Sales Confirmations supplement, form a part of and are expressly subject to this Master Agreement.

**3.2** Sales Confirmations may only be authorized during the Master Agreement Term. Sales Confirmations must be authorized prior to the Expiration Date of this Master Agreement. The Sales Confirmation Term Expiration Date may not be set after the Expiration Date of the Master Agreement Term.

**3.3** Sales Confirmations shall specify the Sales Confirmation Term by designating an Effective Date and Expiration Date.

**3.4** The Judicial Council reserves the right to seek competitive proposals for Electric Service Accounts contracted through a Sales Confirmation. Sellers may be asked to provide proposals for some ESAs (“Proposal(s)”), but may not be asked to provide Proposals on other ESAs, or none at all. The Judicial Council will send out an Appendix E, Direct Access Electricity Purchase Request to selected Sellers approximately one hundred and eighty (180) days prior to the Expiration Date of a duly executed Sales Confirmation. Selection of a Seller for a specific Project is at the sole discretion of the Judicial Council. The Judicial Council will award the Projects based on Sellers’ Project Proposals, price, rate components, prior performance on this contract, and those other risk factors that the Judicial Council may deem pertinent for the delivery of Retail Electricity, such as source and type of Electricity generation, and anticipated carbon intensity of the Electricity services.

**3.5** A description of the general specifications for the Electricity and standards of delivery for Electricity purchased under this Agreement is given in Appendix A, Section 2, Direct Access Electricity. The description of the Electricity service needs for specific facilities will be specified in Appendix E, Direct Access Electricity Purchase Request, and in the Sales Confirmation.

**3.6** **Usage Beyond Expiration**: In the event Buyer does not timely execute a new Sales Confirmation prior to the Expiration Date, whether by expiration or termination, then Electricity supply services may continue following the Expiration Date on a month to month basis until a new Sales Confirmation is executed upon mutual agreement of the Parties (the “Transition Period”). Buyer shall continue to pay Seller the pricing indicated in an authorized Sales Confirmation during the Transition Period. This shall include full requirements service for the relevant Delivery Point for the ESA(s). Buyer hereby agrees to compensate the Seller at an additional $5.00 per MWh. This combined fee as defined in the executed Sales Confirmation, the Electricity charge amount, and the additional $5.00 per MWh provision shall be referenced as the Transition Rate (the “Transition Rate” or “TR”). The amount owed by Buyer to Seller during the Transition Period shall be the product of the Transition Rate and the Metered Usage or Total Usage.

**4.** **Sales Confirmation Process**

**4.1** The Buyer’s Project Manager will at his or her discretion invite multiple Sellers to provide a Seller’s Proposal Form (Appendix E) for a Project. Selection of the Seller(s) that will be invited to provide Seller’s Proposals will take into consideration various factors, including, but not limited to the following: geographic service area, demonstrated capacity to provide requested Electricity, location(s) of the Facilities, and the quality of past performance with Buyer, as applicable.

**4.2** The Judicial Council will award the Projects based on Sellers’ Project Proposals, price, rate components, prior performance on this contract, and those other risk factors that the Judicial Council may deem pertinent for the delivery of Retail Electricity, such as source and type of Electricity generation, and anticipated carbon intensity of the Electricity services.

**4.3** The Buyer’s Project Manager shall complete and issue a Direct Access Electricity Purchase Request, substantially in the form of Appendix E, to all Sellers invited to participate, describing the Electricity the Buyer wants to purchase. The Buyer may indicate if multiple Sales Confirmation Term options are being requested. The Buyer’s Project Manager will complete Appendix E and send it to the Seller(s) electronically.

**4.4** Sales Confirmations authorized for the purchase of Electricity and will be compensated on a Metered or Total Usage basis, at the rates and pursuant to the specifications indicated in the Sales Confirmation.

**4.5** Upon receipt of Direct Access Electricity Purchase Request, Seller will, in coordination with the Buyer’s Project Manager, edit the Direct Access Electricity Purchase Request (Appendix E) if necessary so that it appropriately describes, to the satisfaction of both parties, the various elements of the Direct Access Electricity to be purchased, and submit the revised version.

**4.6** Seller will submit a complete Seller’s Proposal Form (Appendix F), to the email address specified by the Buyer, based upon the description of the delivery of Electricity requested by the Direct Access Electricity Request

**4.7** Seller’s Project Manager shall submit Seller’s Proposal Form to the Buyer’s Project Manager by email in a modifiable MS-Word processing format.

**4.8** The Buyer’s Project Manager shall review separately or with the Seller and may request changes to the Proposal submitted, in which event Seller shall modify and resubmit the Proposal, again in accordance with the provisions of this Appendix B.

**4.9** Seller’s Proposals so submitted are available for acceptance and may not expire or be revoked for a period of sixty (60) Business Days (“Business Days”) following submission to Buyer’s Project Manager.

**4.10** If the Buyer intends to accept Seller’s Proposal and proceed with the Project, the Buyer’s Project Manager will notify the Seller of its Proposal acceptance.

**4.11** The Buyer’s Branch Accounting and Procurement (“BAP”) shall then provide, by email to the Seller, a Sales Confirmation consisting of a cover page with a unique Sales Confirmation number, the accepted Direct Access Electricity Purchase Request (Appendix E) and Seller’s Proposal Form (Appendix F).

**4.12** Seller shall review all documents and, upon acceptance, shall sign the Sales Confirmation Coversheet indicating Seller’s agreement to all the provisions of the Sales Confirmation.

**4.13** Upon receipt of a fully executed Sales Confirmation, counter-signed by the Buyer, the Seller shall begin delivery of Electricity per the service start date defined in the executed Sales Confirmation (Appendix G).

**4.14** Buyer shall from time to time provide Seller with the names and contact information of persons filling primary positions. This letter will be updated from time to time as personnel change, and is effective upon receipt. These changes will not require that this Agreement be amended.

**4.15** The Buyer reserves the right to modify the forms provided in Appendix E and F, as it deems necessary or appropriate, in its sole discretion, and will notify Seller of any modification to said form prior to implementing the modified form(s). Modified forms will be substantially similar to Appendix E and F in this Agreement.

**4.16** Seller Performance Management. The Judicial Council may choose to conduct periodic Business Performance Reviews on completed Projects to evaluate the Seller’s performance for quality assurance, safety, duration of the Project, Judicial Council satisfaction, and other relevant factors. The Judicial Council, at its sole discretion, may not offer subsequent Projects to and/or may terminate an agreement with any Sellers who do not meet minimum performance benchmarks specified in their Business Performance Review.

**4.17** There is no limit on the number of Sales Confirmations the Buyer may request or authorize under this Agreement.

**4.18** The Buyer does not guarantee that Seller will receive any authorized Sales Confirmation(s) under this Agreement.

**5. Invoicing and Payment**

**5.1** **Invoicing.** Seller shall submit invoices to the Buyer in arrears no more frequently than monthly. Seller’s invoices must include information and supporting documentation acceptable to the Buyer. Seller shall adhere to reasonable billing guidelines issued by the Buyer from time to time. Buyer will be invoiced the total amount due for Electricity delivered to Buyer during each month in one of the following ways based on availability and eligibility of Buyer(s) ESA(s), which may change from time to time. **5.2 Sales Confirmation Billing.** Buyer will pay for any agreed to Electricity charges, as defined below. Seller shall invoice for said charges on a monthly basis in arrears for the Term of this Sales Confirmation.

**5.3 Sales Confirmation Components (“Sales Confirmation Components”).** The Sales Confirmation Components are defined according to the agreed billing methods, 5.3.1, or 5.3.2 below. The Sales Confirmation Components will be defined depending on the billing option selected by the Seller in Appendix F, Seller’s Proposal Form. The calculation is outlined below for each of the billing methods permitted under this Agreement:

5.3.1 **DSP Consolidated Billing**:The amount billable by the DSP for the Seller’s Direct Access Electricity Services will equal, the **Metered Usage** multiplied by a) the Sales Confirmation Rate (or the Transition Rate, if applicable), b) plus any additional charges associated with Rate Components marked with a “P” as noted below in Table 2, c) plus any Other Charges, that are not included in the Sales Confirmation Rate, but are specified in Table 3 of this Sales Confirmation.

5.3.2 **Seller Consolidated**: The amount billable by the Seller will equal, the **Total Usage** multiplied by a) the Sales Confirmation Rate (or the Transition Rate, if applicable), b) plus any additional charges associated with Rate Components marked with a “P” as noted below in Table 2, c) plus any Other Charges, that are not included in the Sales Confirmation Rate, but are specified in Table 3 of this Sales Confirmation.

**5.4 Dual Billing (By both the DSP and Seller)**: Dual billing will not be accepted by the Judicial Council.

**5.5** When the Parties elect to use DSP/Utility Consolidated or Seller Consolidated billing, invoices shall include all applicable DSP charges (“DSP Charges”) and Taxes (“Taxes”), and Other Charges (“Other Charges”) allowed pursuant to this Agreement.

**6.** **Invoicing Instructions**.

**6.1** Seller will provide the Buyer and/or Buyer’s representatives or agents with access to its online invoicing system. Payment will be delivered to Seller by a check through the State of California’s State Controller’s Office (“SCO”) and shall be due to Seller as set forth on the Sales Confirmation. The Seller will submit invoices electronically to: [facilitiesservicesinvoices@jud.ca.gov](mailto:facilitiesservicesinvoices@jud.ca.gov).

All invoices must contain:

6.1.1 The Agreement Title and Agreement Number;

6.1.2 Date of invoice.

6.1.3 The Sales Confirmation Number (“Sales Confirmation Number”) provided on the Sales Confirmation;

6.1.4 A unique invoice number;

6.1.5 Seller’s name and address;

6.1.6 Seller’s federal employer identification number (FEIN);

6.1.7 Date range of Metered or Total Usage performed; and

6.1.8 Invoices shall include the Metered or Total Usage per facility, which shall be calculated using the rates and terms indicated in the Sales Confirmation;

6.1.9 Preferred remittance address if this address has changed from the time this Agreement was signed. Changes to the remittance address made on an invoice without the Buyer being notified as will result in processing and payment delays;

**6.2 Payment.** The Buyer will pay each correct, itemized invoice received from Seller after delivery of the Electricity, in accordance with the terms of this Agreement, and the duly authorized Sales Confirmation. Notwithstanding any provision in this Agreement to the contrary, payments to Seller are contingent upon the timely and satisfactory performance of Seller’s obligations under this Agreement.

6.2.1 The Buyer will endeavor to pay invoices within sixty (60) days after receipt of a correct, itemized invoice. In no event shall the Buyer be liable for interest or late charges for any late payments.

6.2.2 Payment shall be made by the Buyer to the Seller at the address specified when this Agreement was signed. Changes to this address can be made by notifying the Buyer in writing of the new remittance address, but should be done prior to invoice submission to avoid processing delays.

6.2.3 The Buyer may withhold full or partial payment to the Seller in any instance in which the Seller has failed or refused to satisfy any material obligation provided for under this Agreement or the Sales Confirmation, or to satisfy payments owed for Seller’s breach of any guarantee set forth in this Agreement.

**6.3 No Implied Acceptance.** Payment does not imply acceptance of Seller’s invoice. Seller shall immediately refund any payment made in error. The Buyer shall have the right at any time to set off any amount owing from Seller to the Buyer against any amount payable by the Buyer to Seller under this Agreement.

**6.4** **Disputed Amounts**: If there is a good faith dispute regarding any invoice, Buyer will pay the undisputed amount of any invoice by the applicable due date, and the Parties will attempt to expeditiously resolve the dispute. Notice of any dispute must be provided not more than six (6) months from the date that such invoice is delivered to Buyer. In no event shall the disputed portion include a dispute for DSP Charges, Metered Usage or Taxes. In the event of disputed DSP Charges and/or Metered Usage, Seller will, at the election of the Buyer, work with the applicable DSP on Buyer’s behalf to resolve the dispute and will reimburse to Buyer any disputed amount that is subsequently corrected, cancelled and rebilled by the DSP. This requirement is applicable regardless of the billing method utilized by the Seller. Any dispute resolution performed in connection with the foregoing shall be resolved in accordance with the provisions of Appendix C, Section 8.7, Rights and Remedies of the Buyer.

**7. Taxes.** Unless otherwise required by law, the Buyer is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Seller or on any taxes levied on employee wages. The Buyer shall only pay for applicable state or local sales, service, use, or similar taxes imposed on the Electricity supplied to the Buyer pursuant to this Agreement.

**END OF APPENDIX B**

APPENDIX C

General Provisions

1. **Provisions Applicable to Services**
   1. **Background Checks.**  Seller shall cooperate with the Buyer if the Buyer wishes to perform any background checks on Seller’s personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Buyer may require. Seller shall not assign personnel who refuse to undergo a background check. Seller shall provide prompt notice to the Buyer of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Buyer and performed by Seller. Seller shall ensure that the following persons are not assigned to perform services for the Buyer: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Seller or that, after disclosure to the Buyer, the Buyer advises are unacceptable to the Buyer.
2. **Seller Certification Clauses.** Seller certifies that the following representations and warranties are true. Seller shall cause its representations and warranties to remain true during the Master Agreement Term. Seller shall promptly notify the Buyer if any representation and warranty becomes untrue. Seller represents and warrants as follows:
   1. **Authority.** Seller has authority to enter into and perform its obligations under this Agreement, and Seller’s signatory has authority to bind Seller to this Agreement.
   2. **Not an Expatriate Corporation.** Seller is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code (“PCC”) section 10286.1, and is eligible to contract with the Buyer .
   3. **No Gratuities.** Seller has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel (“Judicial Branch Personnel”) with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
   4. **No Conflict of Interest.** Seller has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
   5. **No Interference with Other Contracts.** To the best of Seller’s knowledge, this Agreement does not create a material conflict of interest or default under any of Seller’s other contracts.
   6. **No Litigation.**No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Seller’s ability to deliver the Electricity.
   7. **Compliance with Laws Generally.** Seller complies in all material respects with all laws, rules, and regulations applicable to Seller’s business and services.
   8. **Drug Free Workplace.** Seller provides a drug free workplace as required by California Government Code sections 8355 through 8357.
   9. **No Harassment.** Seller does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Seller may interact in the performance of this Agreement, and Seller takes all reasonable steps to prevent harassment from occurring.
   10. **Noninfringement.** The Electricity provided, and Seller’s performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party’s intellectual property right.
   11. **Nondiscrimination.** Seller complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.).Seller does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Seller will notify in writing each labor organization with which Seller has a collective bargaining or other agreement of Seller’s obligations of nondiscrimination.
   12. **National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Seller within the immediately preceding two-year period because of Seller's failure to comply with an order of a federal court requiring Seller to comply with an order of the National Labor Relations Board. Seller swears under penalty of perjury that this representation is true.
3. **Insurance**

**3.1 Basic Coverage.** Seller shall provide and maintain at the Buyer’s discretion and Seller’s expense the following insurance during the Master Agreement Term:

3.1.1 *Commercial General Liability.*The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability “occurrence” form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract.The policy must provide limits of at least $2,000,000 per occurrence and annual aggregate.

3.1.2 *Workers Compensation and Employer’s Liability.*The policy is required only if Seller has employees. The policy must include workers’ compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer’s liability bodily injury at minimum limits of $1,000,000 per accident or disease.

3.1.3 *Automobile Liability.*This policy is required only if Seller uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Seller’s performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least $1,000,000 per occurrence.

* 1. **Umbrella Policies.** Seller may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
  2. **Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
  3. **Deductibles and Self-Insured Retentions.** Seller shall declare to the Buyer all deductibles and self-insured retentions that exceed $100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed $100,000 per occurrence are subject to the Buyer’s approval. Deductibles and self-insured retentions do not limit Seller’s liability.
  4. **Additional Insured Endorsements.** Seller’s commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Buyer, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.
  5. **Certificates of Insurance.** Before Seller begins performing Services, Seller shall give the Buyer certificates of insurance attesting to the existence of coverage. Seller shall provide prompt written notice to the Buyer in the event that insurance coverage is cancelled or materially changed from the coverage set forth in the current certificate of insurance provided to the Buyer.
  6. **Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
  7. **Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer’s liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Buyer, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
  8. **Partnerships.** If Seller is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
  9. **Consequence of Lapse.** If required insurance lapses during the Master Agreement Term, the Buyer is not required to process invoices after such lapse until Seller provides evidence of reinstatement that is effective as of the lapse date.

1. **Indemnity.** Seller will defend (with counsel satisfactory to the Buyer or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys’ fees and costs, that arise out of or in connection with (i) a latent or patent defect in any equipment used by Seller in the delivery of Electricity, (ii) an act or omission of Seller, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, (iv) infringement of any trade secret, patent, copyright or other third party intellectual property, and (v) failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., or failure to comply with any other Labor Code requirements. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Electricity. Seller shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Buyer’s prior written consent, which consent shall not be unreasonably withheld; and the Buyer shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Seller’s duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.
2. **Subsequent Term.** Unless Section 2 of the Coversheet indicates that a Subsequent Term is not applicable, the Buyer may, at its sole option, extend this Master Agreement for two (2) additional three (3) year terms, at the end of which Subsequent Term this Agreement shall expire. In order to exercise these Subsequent Terms, the Buyer must send Notice to Seller at least thirty (30) days prior to the end of the Initial Term. A Subsequent Term will be effective upon the execution of an amendment to this Agreement.
3. **Tax Delinquency.** Seller must provide notice to the Buyer immediately if Seller has reason to believe it may be placed on either (i) the California Franchise Tax Board’s list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization’s list of 500 largest delinquent sales and use tax accounts. The Buyer may terminate this Agreement immediately “for cause” pursuant to Section 7.2 below if (i) Seller fails to provide the notice required above, or (ii) Seller is included on either list mentioned above.
4. **Termination** 
   1. **Termination for Convenience.** The Buyer may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Buyer, Seller shall stop the delivery of Electricity on the date specified in the Notice.
   2. **Termination for Cause.** The Buyer may terminate this Agreement, in whole or in part, immediately “for cause” if (i) Seller fails or is unable to meet or perform any of its duties, or Service Guarantees as specified in Appendix A, Section 2.4, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the Buyer, is not capable of being cured within this cure period); (ii) Seller or Seller’s creditors file a petition as to Seller’s bankruptcy or insolvency, or Seller is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Seller makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
   3. **Termination for Changes in Budget or Law.** The Buyer’s payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Buyer may terminate this Agreement or limit Electricity purchase amounts, and costs therefor, under existing Sales Confirmation(s) upon Notice to Seller without prejudice to any right or remedy of the Buyer if: (i) expected or actual funding to compensate Seller is withdrawn, reduced or limited; or (ii) the Buyer determines that Seller’s performance under this Agreement has become infeasible due to changes in applicable laws.
   4. **Electrical Service Provision Post Termination for Cause.** The Judicial Council reserves its right to: (i) procure Direct Access Retail Electric Services per the Sales Confirmation Process indicated in Appendix B; (ii) return to the relevant DSP bundled service rate after the relevant transition period on the DSP’s Transitional Bundled Service Electric Commodity Prices (TBCC).
   5. **Performance Assurance:**  If either Party determines in its reasonable discretion that the other Party’s creditworthiness or ability to perform under this Agreement has become unsatisfactory due to a material adverse change in the financial conditions of the other Party then that Party (hereafter and for the purposes of Paragraph 7.4 of this Agreement (the “Requesting Party”)) may require Performance Assurance. The Requesting Party shall provide the other Party (hereafter and for the purposes of Paragraph 7.4 of this Agreement (the “Receiving Party”)) with written notice requesting such Performance Assurance in an amount determined by the Requesting Party in a commercially reasonable manner. Upon receipt of such notice the Receiving Party shall have three (3) days to provide such Performance Assurance to the Requesting Party. In the event that the Receiving Party fails to provide such Performance Assurance within three (3) days of receipt of such notice, then an Event of Default (“Event of Default”) shall be deemed to have occurred and the Requesting Party shall be entitled to exercise any remedies set forth in this Agreement. Performance Assurance shall mean cash, letter(s) of credit, corporate guarantees, or other security each in form and amount reasonably acceptable to the Requesting Party.
   6. **Event of Default:** An Event of Default shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within sixty (60) Business Days after written notice; (b) a representation or warranty made by a Party to this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the Master Agreement Term; (c) the failure of a Party to perform any covenant set forth in this Agreement which is not excused by Force Majeure or cured within sixty (60) Business Days after written notice thereof; (d) the failure of a Party to provide Performance Assurance in accordance with Paragraph 7.4 above; (e) the failure of Buyer to utilize Seller as its sole supplier of Electricity for its ESAs (specified in the Sales Confirmation) at any time during the Master Agreement Term (including but not limited to a switch of Buyer’s electric service to another provider); or (f) a Party makes an assignment or any general arrangement for the benefit of creditors or otherwise becomes bankrupt or insolvent.
   7. **Rights and Remedies of the Buyer.**

7.7.1 **Notice of Default.** Seller shall notify the Buyer immediately if Seller is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Seller is in default, the Buyer may do any of the following: (i) withhold all or any portion of a payment otherwise due to Seller, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between Buyer and Seller; (ii) require Seller to enter into nonbinding mediation; (iii) exercise, following Notice, the Buyer’s right to early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

7.7.2 **Nonexclusive Remedies**.All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy.

7.7.3 **Remedies:** (a)If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day from the notice date of termination, which may be retroactive in time to the date Buyer’s ESA(s) were unenrolled from Seller’s supply service, as an early Termination Date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all of the transactions and sales of Electricity existing under this Agreement between the Parties (including any fixed price, or other fixed price components underlying the establishment of the Contract Amount) (the “Terminated Transactions”), (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance including, but not limited to, the suspension of any further deliveries of Electricity. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a “Settlement Amount” for the Terminated Transactions as of the Early Termination Date (or, if in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated on the Early Termination Date, as soon thereafter as is reasonably practicable).

7.7.4 For purposes of subparagraph (a) above, the “Settlement Amount” shall mean present value of economic loss, plus any costs (including reasonable attorney’s fees) incurred by either Buyer or Seller as the Non-Defaulting Party as a result of the early termination. For purposes hereof, the “present value” of any amount will be calculated using the six-month London Interbank Offered Rate as posted in the “Money Rates” column of The Wall Street Journal as of the date of such determination.

7.7.5 If Seller is the Defaulting Party, Buyer’s economic loss shall be calculated as follows: the difference in costs for the estimated undelivered volume of Electricity which Buyer would have consumed from the Early Expiration Date through the end of the applicable Sales Confirmation Term multiplied by the relevant Sales Confirmation Components, and the rate secured by the Buyer for from an alternative provider for that same period.

7.7.6 The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by netting out (i) at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Appendix C, Section 7.4 above, plus any or all other amounts due to the Defaulting Party under this Agreement, against (ii) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by the Defaulting Party to the Non-Defaulting Party.

7.7.7 As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party within sixty (60) Business Days after such notice is effective.

7.7.8 Notwithstanding any other provision of this Agreement, if (i) an Event of Default, or (ii) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (1) to suspend performance under this Agreement; provided, however in no event shall any such suspension continue longer than ten (10) Business Days unless an Early Expiration Date shall have been declared and notice thereof has been given pursuant to this Section 7.6.8, and (2) to the extent that an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity. For purposes of the foregoing, a “Potential Event of Default” shall mean an event which, with notice or passage of time or both, would constitute or result in an Event of Default.

* 1. **Survival.** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

1. **Assignment and Subcontracting.** Seller may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Buyer. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.
2. **Notices.** Notices must be sent to the following address and recipient:

|  |  |
| --- | --- |
| **If to Seller:** | **If to the Buyer :** |
| [name, title, address] | [name, title, address] |
| With a copy to: | With a copy to: |
|  |  |

**9.1** Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

1. Provisions Applicable to Certain Agreements. The provisions in this section are *applicable only to the types of orders specified in the first sentence of each subsection*. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.
   1. **Union Activities Restrictions.** *If the Contract Amount is over $50,000, this section is applicable.* Seller agrees that no Buyer funds received under this Agreement will be used to assist, promote or deter union organizing during the Master Agreement Term. If Seller incurs costs, or makes expenditures to assist, promote or deter union organizing, Seller will maintain records sufficient to show that no Buyer funds were used for those expenditures. Seller will provide those records to the Attorney General upon request.
   2. **Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** *If the Contract Amount is $100,000 or more, this section is applicable.* Seller is in compliance with, and throughout the Master Agreement Term will remain in compliance with: (i) PCC 10295.3 which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee’s or dependent’s actual or perceived gender identity.
   3. **Child Support Compliance Act.** *If the Contract Amount is $100,000 or more, this section is applicable.* Seller recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Master Agreement Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Seller provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
   4. **Priority Hiring.** *If the Contract Amount is over $200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.*  Seller shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
   5. **Iran Contracting Act.** *If the Contract Amount is $1,000,000 or more and Seller did not provide to Buyer an Iran Contracting Act certification as part of the solicitation process, this section is applicable.*  Seller certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“Iran List”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending $20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Buyer to enter into this Agreement pursuant to PCC 2203(c).
   6. **Loss Leader Prohibition.** *If this Agreement involves the purchase of goods, this section is applicable.* Seller shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.
   7. **Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the Buyer by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Buyer may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days’ Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.
   8. **DVBE Commitment.**  *This section is applicable if Seller received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement.* Seller’s failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Seller used DVBE subcontractor(s) in connection with this Agreement: (i) Seller must use the DVBE subcontractors identified in its bid or proposal, unless the Buyer approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Seller must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Buyer: (1) the total amount of money and percentage of work that Seller committed to provide to each DVBE subcontractor and the amount each DVBE subcontractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Seller subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Seller in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. Upon request by the Buyer, Seller shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Seller will comply with all rules, regulations, ordinances and statutes that govern the DVBE program, including, without limitation, Military and Veterans Code section 999.5.
   9. **Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Seller shall assign to the Buyer all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Seller for sale to the Buyer. Such assignment shall be made and become effective at the time the Buyer tenders final payment to ~~Contractor~~ *Seller*. If the Buyer receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Seller shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Buyer any portion of the recovery, including treble damages, attributable to overcharges that were paid by Seller but were not paid by the Buyer as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by ~~Contractor~~ *Seller*, the Buyer shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Seller has been or may have been injured by the violation of law for which the cause of action arose and (a) the Buyer has not been injured thereby, or (b) the Buyer declines to file a court action for the cause of action. *[Revised on 02/01/2022]*
   10. **Good Standing.** *If Seller is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Seller is, and will remain for the Master Agreement Term, qualified to do business and in good standing in California.
   11. **Equipment Purchases.** *If this Agreement includes the purchase of equipment, this section is applicable.* The Buyer may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor’s invoice to the Buyer, or require Seller to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Buyer at no expense to the Buyer. If a theft occurs, Seller must file a police report immediately.
   12. **Four-Digit Date Compliance.** *If this Agreement includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Seller represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the Buyer. “Four-Digit Date Compliant” deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.
   13. **Small Business Preference Commitment.** *This section is applicable if Seller received a small business preference in connection with this Agreement.* Contractor’s failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Seller must within sixty (60) days of receiving final payment under this Agreement report to the Buyer the actual percentage of small/micro business participation that was achieved. If Seller is a nonprofit veteran service agency (“NVSA”), Seller must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.
2. **Miscellaneous Provisions.**
   1. **Independent Contractor.** Seller is an independent contractor to the Buyer. No employer-employee, partnership, joint venture, or agency relationship exists between Seller and the Buyer. Seller has no authority to bind or incur any obligation on behalf of the Buyer. If any governmental entity concludes that Seller is not an independent contractor, the Buyer may terminate this Agreement immediately upon Notice.
   2. **GAAP Compliance.** Seller maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
   3. **Audit.** Seller must allow the Buyer or its designees to review and audit Contractor’s (and any subcontractors’) documents and records relating to this Agreement, and Seller (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Seller (or any subcontractor) is not in compliance with this Agreement, Seller shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Seller has overcharged the Buyer five percent (5%) or more during the time period subject to audit, Seller must reimburse the Buyer in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
   4. **Confidential Information.** During the Master Agreement Term and at all times thereafter, Seller will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Buyer’s express prior written consent on a case-by-case basis. Seller will disclose Confidential Information only to its employees or contractors who need to know that information in order to delivery Electricity hereunder and who have executed a confidentiality agreement with Seller at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Seller will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Seller protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Buyer owns all right, title and interest in the Confidential Information. Seller will notify the Buyer promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Buyer to protect such Confidential Information. Upon the Buyer’s request and upon any termination or expiration of this Agreement, Seller will promptly (a) return to the Buyer or, if so directed by the Buyer, destroy all Confidential Information (in every form and medium), and (b) certify to the Buyer in writing that Seller has fully complied with the foregoing obligations. Seller acknowledges that there can be no adequate remedy at law for any breach of Contractor’s obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Buyer shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
   5. **Publicity.** Seller shall not make any public announcement or press release about this Agreement without the prior written approval of the Buyer.
   6. **Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
   7. **Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
   8. **Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Buyer. A waiver of enforcement of any of this Agreement’s terms or conditions by the Buyer is effective only if expressly agreed in writing by a duly authorized officer of the Buyer. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
   9. **Force Majeure.** Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible. Force Majeure means any event or occurrence that is beyond the control of a Party and that: (i) is not the result of the negligence of the Claiming Party; and (ii) which, by the exercise of due diligence, the Claiming Party is unable to avoid or cause to be avoided. A claim of Force Majeure may not be based on: (i) Buyer’s inability to economically use Electricity purchased under this Agreement; (ii) Buyer’s election to close, sell, abandon or materially curtail or discontinue operation of Buyer’s facilities due to any economic circumstance; (iii) Seller’s inability to acquire Electricity at a particular price; or (iv) Seller’s ability to sell Electricity at a price above the Contract Amount. Except for obligations for the payment of money, if either Party is rendered unable, wholly or in part, to perform its physical obligations under this Agreement (including but not limited to the delivery or receipt of Electricity hereunder) due to Force Majeure, the physical obligations of each Party will be suspended for the duration of any inability to perform.

11.9.1.1A Party claiming Force Majeure (the “Claiming Party”) will provide notice to the other Party of any event of Force Majeure, no later than one (1) business day, upon Claiming Party becoming aware of the applicable event of Force Majeure. Such notice shall be initially delivered to other Party to the pre-agreed telephone number and/or electronic mail provided for any such claim of Force Majeure to be effective. In said notice, Claiming Party shall describe the nature, and estimated duration of such inability to perform. The cause of such inability to perform will be remedied with all reasonable dispatch.

* 1. ***Regulatory Events****. If there is a change in law, administrative regulation, rule, design or structure, order, judicial decision, statute, or a change in an interpretation, operation, administration or application of any of the foregoing (collectively, a “Regulatory Event”) and such Regulatory Event causes Seller to directly or indirectly incur any capital, operating, commodity or other costs (including, but not limited to increased Taxes and redefinition of charges) relating to the provision of services contemplated herein above, or in addition to those existing prior to the date of the Regulatory Event, then Seller shall be permitted to pass through the economic effects of any such Regulatory Event to Buyer and Buyer shall pay or reimburse Seller for the dollar amounts attributable to such economic effects resulting from the Regulatory Event. Neither Party shall be obligated to perform under this Agreement if a Regulatory Event renders that Party’s performance of its respective obligations illegal or impossible to perform, including, but not limited to the termination of retail sale of electricity.* *[Revised 02/01/2022]*
  2. **Follow-On Contracting.** No person, firm, or subsidiary who has been awarded an agreement by the Seller may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
  3. **Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
  4. **Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word “including” means “including, without limitation.” Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
  5. **Time of the Essence.** Time is of the essence in Seller’s performance under this Agreement.
  6. **Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

**END OF APPENDIX C**

APPENDIX D

Defined Terms

As used in this Agreement, the following terms have the indicated meanings:

**“Agreement”** means the Master Retail Electricity Sales Agreement (the “Master Agreement”) together with the Sales Confirmation(s), and is defined on the Coversheet.

**“ANSI”** means the American National Standards Institute and is defined in Appendix B, Section 2.

**“Ancillary & Settlement Charges/Credits”** means applicable charges and/or credits for ancillary services and other ISO charges and credits as set forth in the applicable ISO Tariff and for other ISO costs not otherwise included in any of the defined cost components. Applicable ancillary service charges will be allocated based on Buyer’s $/MWh share of Seller’s total portfolio costs for ancillary services, and is defined in Appendix G, Sample Sales Confirmation, under Rate Components, Table 2.

**“Baseline Usage”** shall mean historical usage as measured by the DSP for the most recently available twelve (12) month period at the time of a Direct Access Electricity Request (Appendix E). In the event that such 12-month period data is not available, the Baseline Usage shall be determined based upon best available usage information, and is defined in Appendix E, Direct Access Electricity Request.

**“Basis Charge”** shall mean that for each Settlement Interval as the product of (i) the Metered Usage and (ii) the difference between the Real Time Locational Marginal Price of the Load Zone and the Real Time Locational Marginal Price of the associated Hub as defined by the ISO, and is defined in Appendix G, Sample Sales Confirmation.

**“Business Days”** means Monday through Friday, excluding holidays, and is defined in Appendix B, Section 4.

**“Buyer”** means the Judicial Council of California, or the Judicial Council, and is defined in the Coversheet.

**“CAISO Monthly CPM Allocation”** means charges related to the CAISO’s backstop capacity procurements under its Capacity Procurement Mechanism authority. California Resource Adequacy is a charge for fulfilling resource adequacy requirements imposed by the ISO or otherwise and is defined in Appendix G, Sample Sales Confirmation, under Rate Components, Table 1.

**“CRR”** means Congestion Revenue Rights, which are financial instruments, made available through the CRR allocation, CRR auction and Secondary Registration System, that enable CRR holders to manage variability in congestion costs based on locational marginal pricing. CRRs are acquired primarily, although not solely, for the purpose of offsetting integrated forward market congestion costs that occur in the day-ahead market. These terms are defined in Appendix G, Sample Sales Confirmation, under Rate Components, Table 1.

**“CRR Hourly Settlements”** means charges and credits related to the Congestion Revenue Rights as defined by the ISO[[1]](#footnote-2).

**“Confidential Information”** means: (i) any information related to the business or operations of the Buyer, including information relating to the Buyer’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Buyer (and proprietary information of third parties provided to Seller) which is designated confidential or proprietary, or that Seller otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Seller demonstrates to the Buyer’s satisfaction that: (a) Seller lawfully knew prior to the Buyer’s first disclosure to Seller, (b) a third party rightfully disclosed to Seller free of any confidentiality duties or obligations, or (c) is, or through no fault of Seller has become, generally available to the public.

**“Contract Amount”** means the sum of all Sales Confirmations shall be the total Contract Amount and is defined on the Coversheet.

**“Coversheet”** refers to the first page of this Agreement, and is defined on the Coversheet.

**“CPUC”** means the California Public Utility Commission and is defined in Appendix A, Section 1.

**“Delivery Point”** means the point where the Buyer’s Electricity will be delivered, and is defined in Appendix A, Section 2.

**“Direct Access Program”** means the California Direct Access Program, and is administered through the California Public Utility Commission and is defined in Appendix A, Section 1.

**“Distribution and Transmission Losses”** means the difference in the generated and distributed units of Electricity. The unit of electric energy generated by the Power Station does not match with the units distributed to the Buyer. Some percentage of the units are lost in the distribution network. Transmission and Distribution Losses are the amounts that are not paid for by the Buyer. This term is defined in Appendix B, Section 3.

**“DSP / Distribution Service Provider”** means the Buyer’s Transmission and Distribution Service Provider that is the Investor Owned Utility that operates the transmission and distribution infrastructure, in the case of this Agreement this will be one of the three California DSPs: PG&E, SCE or SDGE, and is defined in Appendix A, Section 2.

**“DSP Charges”** mean charges for Services provided by the DSP which may be included in an invoice delivered by the Seller or by the DSP, depending on the billing method, and are defined in Appendix B, Section 6.

**“Early Termination Date”** means the designated day from the notice date of termination, which may be retroactive in time to the date Buyer’s ESA(s) were unenrolled from Seller’s supply service, and is defined in Appendix C, Section 7.

**“Effective Date”** means the date when an Agreement starts to operate and is defined on the Coversheet.

**“Electricity”** means the presence and flow of electric charge (electrons) in one direction through conductors such as copper wires. Electricity for the purpose of this Agreement is used to mean electrical energy sold by Seller to the Buyer, and is defined on the Coversheet.

**“Electricity Charges”** means the amount to be charged for the Direct Access Electric provided by the Seller, and is defined in Appendix B, Section 5.

**“Electric Service Provider or ESP’** means the Seller and is defined on the Coversheet.

**“ESA(s) / Electric Service Account(s)”** means the Buyer’s account for Electric Services at a given location, and is defined in Appendix A, Section 2.

**“Expiration Date”** means the day on which the Term or Subsequent Term of the Master Agreement or Sales Confirmation ends, and is defined on the Coversheet.

**“Event of Default”** shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within sixty (60) Business Days after written notice; (b) a representation or warranty made by a Party to this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the Master Agreement Term; (c) the failure of a Party to perform any covenant set forth in this Agreement which is not excused by Force Majeure or cured within sixty (60) Business Days after written notice thereof; (d) the failure of a Party to provide Performance Assurance; (e) the failure of Buyer to utilize Seller as its sole supplier of Electricity for its ESAs (specified in the Sales Confirmation) at any time during the Sales Confirmation Term (including but not limited to a switch of Buyer’s electric service to another provider); or (f) a Party makes an assignment or any general arrangement for the benefit of creditors or otherwise becomes bankrupt or insolvent. This term is defined in Appendix C, Section 7.

**“Initial Agreement Term”** is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet of an authorized Master Agreement.

**“ISO / CAISO”** means the California Independent System Operator.

**“Judicial Branch Entity”** or **“Judicial Branch Entities**” means any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

**“Judicial Branch Personnel”** means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

**“Load Zone”** means a geographic area established by the ISO from which the ISO derives aggregated data of MW-Hour net energy for load, and for which the ISO publishes prices used for settlement purposes. The applicable Load Zone(s) for Seller’s account(s) are set forth in Delivery Points, Table 1, and are defined in Appendix G, Sample Sales Confirmation, Delivery Points, Table 1.

**“Master Agreement”** means the Master Retail Electricity Sales Agreement and is defined on the Coversheet.

**“Master Agreement Term”** comprises the Initial Agreement Term and any Subsequent Terms of the Agreement, and is defined on the Coversheet.

**“Metered Usage”** shall be defined as the Metered Usage reported by the DSP as recorded by revenue grade power meters as defined in the American National Standards Institute (ANSI) standard C12.20-2010 Class 0.2. and is defined in Appendix A, Section 2.

**“Notice”** means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C.

**“Other Charges”** means charges that are not part of the relevant Sales Confirmation Components, as specified in – Table 2 “Rate Components”, but specified by Seller in Table 3 “Other Charges,” and are defined in Appendix G, Sample Sales Confirmation.

**“Party or Parties”** means the Seller and the Buyer and is defined on the Coversheet.

**“Pass Through Charge”** means any applicable third party costs, charges, taxes applicable to the Judicial Council, duty, levy, tariff or any government or Regulator approved imposed charge relating to the supply and distribution of Energy to the Supply Points including without limitation, transportation and distribution use of system charges by the DSP, and is defined in Appendix G, Sample Sales Confirmation.

**“PCC”** refers to the California Public Contract Code, and is defined in Appendix C, Section 2.

**“PG&E”** means Pacific Gas and Electric and is defined in Appendix A, Section 1.

**“Project(s)”** means the various Direct Access Electricity Requests, as may be issued, for Electricity for Buyers facilities as further defined in Appendix A, Section 1.

**“Rate Components”** are defined in Table 1 of Appendix F and G and shall be invoiced on a pass-through basis for those Rate Components that are marked with a “P”. Rate Components marked with an “F” shall be included in the Sales Confirmation Rate.

**“Receiving Party”** means the party that is being requested to provide a Performance Assurance from the Requesting Party, and is defined in Appendix C, Section 7.

***“Regulatory Events”*** *means if there is a change in law, administrative regulation, rule, design or structure, order, judicial decision, statute, or a change in an interpretation, operation, administration or application of any of the foregoing. [Revised 02/01/2022]*

**“Requesting Party”** means the party that requests a Performance Assurance from the Receiving Party, and is defined in Appendix C, Section 7.

**“RPS”** means Renewable Portfolio Standard charges. California's RPS program was established in 2002 by Senate Bill (SB) 1078 (Sher, 2002) with the initial requirement that 20% of Electricity retail sales must be served by renewable resources by 2017. The program was accelerated in 2015 with SB 350 (de León, 2015) which mandated a 50% RPS by 2030. SB 350 includes interim annual RPS targets with three-year compliance periods and requires 65% of RPS procurement to be derived from long-term contracts of 10 or more years. In 2018, SB 100 (de León, 2018) was signed into law, which again increases the RPS to 60% by 2030 and requires all the state's Electricity to come from carbon-free resources by 2045. RPS includes charges incurred by Seller to satisfy Renewable Portfolio Standard requirements associated with Buyer’s Delivery Point(s) identified in the authorized Sales Confirmation, and is defined in Appendix G, Sample Sales Confirmation, Rate Components, Table 2.

**“Request Number”** means the Direct Access Electricity Request Number associated with a given Project, and is defined in Appendix E.

**“SDG&E”** means San Diego Gas & Electric Company and is defined in Appendix A, Section 1.

**“Sales Confirmation(s)”** means the document that supplements, forms a part of and is expressly subject to that certain Master Retail Electricity Sales Agreement (the “Master Agreement”), and is defined in the Coversheet.

**“Sales Confirmation Components”** mean the amount the Buyer shall be obligated to pay to Seller under a Sales Confirmation, equaling the total combined amounts calculated including the Sales Confirmation Rate, multiplied by the Rate Components, plus Other Charges and is defined in Appendix B, Section 2.2, and in Appendix G, Sample Sales Confirmation.

**“Sales Confirmation Number”** means the identifying number indicated on the Coversheet of a duly executed Sales Confirmation, and is defined in Appendix G, Sample Sales Confirmation.

**“Sales Confirmation Price”** is comprised of the Sales Confirmation Rate, the Applicable Rate Components, and Other Charges, the sum of which shall be the Sales Confirmation Price, and is defined in Appendix F, Section 3.

**“Sales Confirmation Term”** means the Term of a Sales Confirmation issued under this Agreement, and is indicated by the Effective Date and Expiration Date on the Coversheet of an authorized Sales Confirmation, and is defined on the Coversheet.

**“Seller”** means the Electric Service Provider or ESP, and is defined on the Coversheet.

**“Service Account Number”** means the unique numerical identifier of a meter for which Buyer requests service as specified in Delivery Point(s), Table 1, and is defined in Appendix G, Sample Sales Confirmation, Delivery Points, Table 1.

**“Service Start Date”** means the utility meter read occurring at 12:00 am (midnight) on or about earliest start date upon which a particular ESA is switched to Seller and is defined in Appendix A, Section 2.

**“Service End Date”** means the scheduled read date that occurs during the month and year identified as the End Date specified in the Sales Confirmation, and is defined in Appendix A, Section 2.

**“Settlement Amount”** means the present value of economic loss, plus any costs (including reasonable attorney’s fees) incurred by either Buyer or Seller as the Non-Defaulting Party as a result of the early termination. For purposes hereof, the “present value” of any amount will be calculated using the six-month London Interbank Offered Rate as posted in the “Money Rates” column of The Wall Street Journal as of the date of such determination, and is defined in Appendix C, Section 7.

**“Settlement Interval”** means the time interval designated by the applicable ISO in which the physical dispatch of Electricity is also financially settled, and is defined in Appendix G, Sample Sales Confirmation.

**“SCE”** meansSouthern California Edison and is defined in Appendix A, Section 1.

**“SCO”** means the State of California’s State Controller’s Office and is defined in Appendix B, Section 6.

**“Subsequent Term(s)”** means that Buyer shall have the option, exercisable upon written notice, to extend this Master Agreement for two (2) additional periods of three (3) years each. Subsequent Terms shall be authorized by written Notice given by Buyer, and is defined on the Coversheet.

**“Taxes”** means that unless otherwise required by law, the Buyer is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Seller or on any taxes levied on employee wages. The Buyer shall only pay for applicable state or local sales, service, use, or similar taxes imposed on the Electricity supplied to the Buyer pursuant to this Agreement, and is defined in Appendix B, Section 5.

**“Termination Payment”** means that the Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by netting out (i) at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement, against (ii) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the ) payable by the Defaulting Party to the Non-Defaulting Party, and is defined in Appendix C, Section 7.

**“Terminated Transactions”** means the process of liquidation and termination all of the transactions and sales of Electricity existing under this Agreement between the Parties (including any fixed price, or other fixed price components underlying the establishment of the Contract Amount), and is defined in Appendix C, Section 7.

**“Total Usage”** shall be defined as the Metered Usage plus the applicable transmission and distribution losses.. This term is defined in Appendix A, Section 2.

**“Transition Period”** means that in the event Buyer does not timely execute a new Sales Confirmation prior to the Expiration Date, whether by expiration or termination, then Electricity supply services may continue following the Expiration Date on a month to month basis until a new Sales Confirmation is executed upon mutual agreement of the Parties, and is defined in Appendix B, Section 3.

**“Transition Rate”** means the rate for Electricity supply services that may continue following the End Date on a month to month basis until a new Sales Confirmation is executed and is defined in Appendix B, Section 3.

**“Transmission Operator”** means the entity entrusted with transporting energy in the form of electrical power on a state or regional level using fixed infrastructure, and is defined in Appendix A, Section

**“MWh”** means a megawatt hour, which is a unit of measure of electric energy. A MWh is one thousand (1,000) kilowatt-hours (“kWh”). A MWh is the amount of Electricity generated by a one megawatt (“MW”) electric generator operating or producing Electricity for one hour, and is defined in Appendix B, Section 3.

**“Non-Defaulting Party”** means the party that is not in default, and is defined in Appendix C, Section 7.

**END OF APPENDIX D**

**APPENDIX E**

**Direct Access Electricity Request**

**Request No. [#]**

**Date:** [Date]

**From:** [Project Manager Name]

[Address]

[Phone/Fax]

[Email]

**Project:**  [Project Title]

**Name of Project Location:** [Name of Project Location]

**Address of Project Location:** [Address]

**Agreement Number:** [Agreement Number]

The Judicial Council of California requests that you provide a Proposal Package for the above referenced project and Request Number (“Request Number”) as per the Direct Access Electricity (“Electricity”) requested below.

The delivery of Electricity was discussed on [Date] with the following individuals:

[List contact name, company, and email/phone number here]

**Your proposal is due on or before:** [Time and Date]

**Proposed Electricity Delivery Schedule:** [Service Start Date / End Dates]

**Requested Sale Confirmation Term(s). For each Sales Confirmation Term option, submit a separate Appendix F, Seller’s Proposal Form.**

Option 1 [Number of Months]

Option 2 [Number of Months]

Option 3 [Number of Months]

**Instructions:** Electricity requested should be detailed below in collaboration with Seller(s). In your description, specify what documents (i.e. historical usage data), if any, are being provided by the Judicial Council. In table 1 include Service Account Number(s) / Delivery Point(s), in table 2, include existing on-site generation, if any, and in table 3, include the location’s historical usage (“Baseline Usage”) as measured by the DSP for the most recently available twelve (12) month period at the time of the request. In the event that such twelve (12) month period data is not available, the Baseline Usage shall be determined based upon best available usage information. Include all applicable phasing and schedule constraints. If detailed schedules and/or progress reports are required, include frequency, type(s) of information needed and, if applicable, any particular format to be used. Attach additional pages as needed.

**Electricity Requested: Table 1 – Electricity Request Service Account Numbers / Delivery Point(s):**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **ESA Number** | **Service Address** | **City, State, Zip** | **DSP** | **Est. Start Date** |
| 1 |  |  |  |  |  |
| 2 |  |  |  |  |  |

**On-Site Generation Disclosure:** The Judicial Council hereby represents and warrants to Seller that there is no existing on-site generation installed at any of Judicial Council’s Delivery Point(s) set forth in this Direct Access Electricity Request, except as listed in Table 1 below.

**Table 2 – On-Site Generation Disclosure:**

|  |  |  |
| --- | --- | --- |
| **Facility Name** | **Generation Type** | **Nameplate Capacity** |
|  |  |  |

**Table 3 (MWh) – Judicial Council’s Baseline Usage as indicated for the Project Location:**

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Jan** | **Feb** | **Mar** | **Apr** | **May** | **Jun** | **Jul** | **Aug** | **Sept** | **Oct** | **Nov** | **Dec** |
| [ ] | [ ] | [ ] | [ ] | [ ] | [ ] | [ ] | [ ] | [ ] | [ ] | [ ] | [ ] |

**END OF APPENDIX E**

**Appendix F**

**Seller’s Proposal Form**

**Date:** [Date]

**Direct Access Electricity Request No. (Appendix E): [#]**

**Judicial Council PM:** [Project Manager Name] **Seller’s PM:** [Project Manager Name]

[Address] [Company]

[Address] [Address]

[Phone/Fax] [Phone/Fax]

[Email] [Email]

[Email for Invoice Notification]

**Project:**  [Project Title]

Option No: [Option No.]

**Electric Service Accounts: Table 1 – Delivery Point(s) included under Seller’s Proposal:**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Electricity Service Account Number** | **Service Address** | **City, State, Zip** | **Load Zone (“Load Zone”)** | **DSP** | **Est. Start Date** |
| 1 |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |

**Start Date:** Service Start Date (“Service Start Date”) shall commence once a Sales Confirmation has been duly authorized by the Buyer and the selected Seller, see Appendix B, Sales Confirmation Authorization Process for additional detail. The Service Start Date on the Sales Confirmation shall be the date upon which the selected Seller begins provision of Direct Access Electricity Services. The Service Start Date will be referenced by the utility meter read occurring at 12:00 am (midnight) on or about the Start Date. Billing can not commence prior to the Service Start Date.

**Start Date of Sales Confirmation: [@Start Date].**

**End Date:** The Service End Date shall match the Sales Confirmation’s Expiration Date noted in the Coversheet of a duly executed Sales Confirmation. For billing purposes that will be identified by the utility meter read occurring at 23:59 (midnight) on the Expiration Date.

**End / Expiration Date: [@End / Expiration Date]**

**Master Contract:** [Master Agreement Number] **MA Expiration Date:**[MA# Expiration Date]

**Seller’s CPUC #:** [CPUC Number] **Seller’s CPUC # Expiration Date:** [Expiration Date]

If Electricity delivery is to be performed by a Sub-Contractor, include the name of the Sub-Contractor: [Name of Sub-Contractor]

A Sales Confirmation issued as a result of this proposal will be priced according to the following:

**Electricity Charges**: Buyer will pay, for any Usage during the Sales Confirmation Term, an amount equal to (1) [Metered or Total Usage] multiplied by the Sales Confirmation Rate (or the Transition Rate, if applicable) in Section 4., (2) charges associated with Pricing Components marked with a “P” or “Pass Through” in Rate Components, Table 1, Section 4.1 below, (3) any Other Charges as noted in Table 2, Section 4.2 below that are not included in the Sales Confirmation Price, and Pass Through Charges as noted in Section 4.3.

Does the Seller agree to provide Electricity as detailed in Appendix E, Direct Access Electricity Request?  Yes  No

**1. Direct Access (DA) Service, Billing Options and Invoicing.** Buyer will be invoiced the total amount due for Electricity delivered to Buyer each month in one of the following ways based on availability and eligibility of Buyer(s) Electric Service Account(s), which may change from time to time. Indicate below Seller’s Preferred Direct Access Billing Method to be applied to the Sales Confirmation, if awarded:

|  |  |
| --- | --- |
| **Direct Access (DA) Service, two (2) Billing Option scenarios. \*\*Select one (1) option only.** | **Mark an X to indicate selected Billing Option** |
| a) **DSP Consolidated Billing:** Buyer will receive one (1) invoice from the DSP for both Electricity Charges and DSP Charges. |  |
| b) **Seller** **Consolidated:** Buyer will receive one (1) invoice from the Seller for both Electricity charges and DSP Charges. |  |

**2. Seller’s Timeline for Account Transfer from DSP to Retail Electricity Service: (Estimated)**

|  |  |
| --- | --- |
| **Description of Action** | **Estimated Date of Delivery** |
|  |  |
|  |  |

**3. Sales Confirmation Price** (“Sales Confirmation Price”). Seller shall indicate the following details as applicable to providing the Electricity Services for the specified ESAs:

**3.1** **Section 4)** Sales Confirmation Rate, **Section 4.1)** Applicable Rate Components, **Section 4.2)** Other Charges, and **Section 4.3)** Pass Through Charges, the sum of which shall be the Sales Confirmation Price. The Sales Confirmation Price will be calculated based on the billing option selected by the Seller in **Section 1** above. The pricing indicated herein shall be fully burdened and inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Seller for delivery of Electricity to the Buyer. Buyer will pay for any Usage, billed on a monthly basis in arrears for the Sales Confirmation Term.

**4. Sales Confirmation Rate:** The Sales Confirmation Rate for Electricity price shall be **[$\_\_\_\_\_\_\_\_]** per MWh.

**4.1 Rate Components** (“Rate Components”)**.** As shown in **Table 2**, Buyer shall be invoiced on a pass-through basis for those Rate Components that are marked with a **“P”**. Rate Components marked with an **“F”** shall be included in the Sales Confirmation Rate.

4.1.1 **Pass Throughs (“Pass Through Charge”)**: The Sales Confirmation Rate does not include the following items which will be passed through:

4.1.1.1 DSP Charges and credits invoiced to Seller by the applicable DSP for each Delivery Point.

4.1.1.2 Taxes. Unless otherwise required by law, the Buyer is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Seller or on any taxes levied on employee wages. The Buyer shall only pay for applicable state or local sales, service, use, or similar taxes imposed on the Electricity supplied to the Buyer pursuant to this Agreement.

**Table 2 – Rate Components:**

|  |  |
| --- | --- |
| Energy Charge |  |
| Basis Charge |  |
| Ancillary & Settlement Charges/Credits |  |
| California Resource Adequacy |  |
| CRR Hourly Settlements |  |
| CAISO Monthly CPM Allocation |  |
| Renewable Portfolio Standards Charge (“RPS”) |  |

**4.2 Other Charges:** Seller shall indicate below in **Table 3** any Other Charges (“Other Charges”) exclude from **Sections 4, and 4.1** above.

**Table 3 – Other Charges:**

|  |  |
| --- | --- |
| Type of Charge: | Background Information Regarding Charge: |
|  |  |
|  |  |

**4.3** For a list of defined terms, see Appendix D.

**END OF APPENDIX F**

APPENDIX g

**SAMPLE SALES CONFIRMATION**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **JUDICIAL COUNCIL OF CALIFORNIA**  **STANDARD AGREEMENT COVERSHEET** | | | | |
|  | | |  | SALES CONFIRMATION NUMBER |
|  | | |  | **[@#]** |
|  | | |  | SELLER’S CPUC NUMBER |
|  | | |  | **[@#]** |
| 1. | In this Sales Confirmation, the term “Seller” refers to **[@Seller’s name]** and the term “Judicial Council” or “Buyer” refers to the **Judicial Council of California**. | | | |
| 2. | This Sales Confirmation becomes effective as of **[@Date]** (the “Effective Date”) and expires on **[@Date]** (“Expiration Date”). | | | |
|  | | | | |
| 3. | The maximum amount payable to the Seller under this Sales Confirmation shall be calculated as defined in Section 5.0, below. | | | |
| 4. | This Sales Confirmation supplements, forms a part of and is expressly subject to that certain Master Retail Electricity Sales Agreement (the “Master Agreement”) dated **[@Executed Date]**, as may be amended from time to time, (which is incorporated herein for all purposes, and along with this Sales Confirmation, is collectively referred to as the (“Agreement”) between the Buyer and **[@Seller Name]**. Buyer and Seller may be individually referred to as “Party” or collectively as “Parties”. Terms that are capitalized but not otherwise defined in this Sales Confirmation shall have the meaning(s) ascribed to such terms in the Master Agreement or as defined in the applicable California ISO (“ISO”) tariff. In the event of inconsistency between the terms of this Sales Confirmation and the terms of the Master Agreement, the terms and conditions of the Sales Confirmation shall prevail. The Parties have agreed to transact as set forth below. | | | |
| 5. | The purpose of this Sales Confirmation is to:  Provide Direct Access Electricity Services at **[@Location]** for the following ESA(s) **[@ESA Details]**.  The Seller is hereby authorized to provide the Retail Electric Services specified in the attached **[@Seller’s Proposal Form]** in accordance with the Master Agreement and this Sales Confirmation. | | | |
| 6. | This Sales Confirmation is issued pursuant to Master Agreement No. **[@Master Agreement Number]** between the Buyer and the Seller.  Except as provided herein, all the terms and conditions of the Agreement, as amended, shall remain in full force and effect. | | | |
|  | | | | |
|  |  | | | |
|  |  | | | |
| **JUDICIAL COUNCIL’S SIGNATURE** | | **SELLER’S SIGNATURE** | | |
| **Judicial Council of California** | | SELLER’S NAME *(if Seller is not an individual person, state whether Seller is a corporation, partnership, etc.)*  **[@Seller’s name]** | | |
| BY *(Authorized Signature)* | | BY *(Authorized Signature)* | | |
| PRINTED NAME AND TITLE OF PERSON SIGNING | | PRINTED NAME AND TITLE OF PERSON SIGNING | | |
| DATE EXECUTED | | DATE EXECUTED | | |
| ADDRESS    Branch Account and Procurement  455 Golden Gate Avenue, 6th Floor  San Francisco, CA 94102 | | ADDRESS    **[@Address]** | | |

**1. Electric Service Accounts.**

**Table 1 – Delivery Point(s) included under this Sales Confirmation:**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Electricity Service Account Number** | **Service Address** | **City, State, Zip** | **Load Zone (“Load Zone”)** | **DSP** | **Est. Start Date** |
| 1 |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |

**2. Sales Confirmation Term (“Sales Confirmation Term”):** The Sales Confirmation Term will begin on the Effective Date and shall expire on the Expiration Date noted above in the coversheet. The Sales Confirmation Term shall be a total of **[\_\_]** Months.

**3. Service Start Date (“Service Start Date”):** The Service Start Date is the date upon which the Seller begins provision of Direct Access Electricity Services. The Service Start Date will be referenced by the utility meter read occurring at 12:00 am (midnight) on or about the Start Date. Billing can not commence prior to the Service Start Date.

**4. Service End Date:** The Service End Date shall match the Sales Confirmation’s Expiration Date noted above in the Coversheet. For billing purposes that will be identified by the utility meter read occurring at 23:59 (midnight) on the Expiration Date.

**5. Sales Confirmation Billing.** Buyer will pay for any agreed to Electricity charges, as defined below. Seller shall invoice for said charges in relation to Metered or Total Usage on a monthly basis in arrears for the Term of this Sales Confirmation.

**5.1** Indicate herein the one (1) billing option selected by the Seller in Appendix F, Seller’s Proposal Form:

**[ ]** DSP Consolidated Billing

**[ ]** Seller Consolidated

**5.2 Sales Confirmation Components (“Sales Confirmation Components”).** The Sales Confirmation Components are defined according to the agreed billing methods, 5.2.1), or 5.2.2), below. The Sales Confirmation Components will be defined depending on the billing option selected by the Seller in Appendix F, Seller’s Proposal Form. The calculation is outlined below for each of the billing methods:

5.2.1 **DSP/Utility Consolidated Billing**:The amount billable by the DSP for the Seller’s Direct Access Electricity Services will equal, the [**Metered Usage]** multiplied by a) the Sales Confirmation Rate (or the Transition Rate, if applicable), b) plus any additional charges associated with Rate Components marked with a “P” as noted below in Table 2, c) plus any Other Charges, that are not included in the Sales Confirmation Rate, but are specified in Table 3 of this Sales Confirmation.

5.2.2 **Seller Consolidated**: The amount billable by the Seller will equal, the [**Total Usage]** multiplied by a) the Sales Confirmation Rate (or the Transition Rate, if applicable), b) plus any additional charges associated with Rate Components marked with a “P” as noted below in Table 2, c) plus any Other Charges, that are not included in the Sales Confirmation Rate, but are specified in Table 3 of this Sales Confirmation.

**6. Sales Confirmation Rate:** The Sales Confirmation Rate for Electricity shall be **[$\_\_\_\_\_\_\_\_]** per MWh.

**6.1 Rate Components:** As shown in Table 2, Buyer shall be invoiced on a pass-through basis for those Rate Components that are marked with a “P”. Rate Components marked with an “F” shall be included in the Sales Confirmation Rate.

6.1.1 **Pass Through Charges**: The Sales Confirmation Rate does not include the following items which will be Passed Through:

6.1.1.1 DSP Charges and credits invoiced to Seller by the applicable DSP for each Delivery Point.

6.1.1.2 Taxes. Unless otherwise required by law, the Buyer is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Seller or on any taxes levied on employee wages. The Buyer shall only pay for applicable state or local sales, service, use, or similar taxes imposed on the Electricity supplied to the Buyer pursuant to this Agreement.

**Table 2 – Rate Components:**

|  |  |
| --- | --- |
| Energy Charge |  |
| Basis Charge |  |
| Ancillary & Settlement Charges/Credits |  |
| California Resource Adequacy |  |
| CRR Hourly Settlements |  |
| CAISO Monthly CPM Allocation |  |
| Renewable Portfolio Standards Charge (“RPS”) |  |

**6.2 Other Charges:** Seller shall indicate below in Table 3 any Other Charges (“Other Charges”) exclude from Sections 5, and 6 above.

**Table 3 – Other Charges:**

|  |  |
| --- | --- |
| Type of Charge: | Background Information Regarding Charge: |
|  |  |
|  |  |

**7. Miscellaneous Provisions**

**7.1 Material Change:** Buyer shall notify Seller of any change in its operations or activities that could reasonably be expected to result in a Material Change (“Material Change”) in Buyer’s Metered or Total Usageduring the Sales Confirmation Term within a commercially reasonable period of time prior to the implementation of such change. Material change shall mean Buyer’s Metered or Total Usage changes by more than fifty (50%) as compared to Baseline Usage and lasting more than two (2) billing cycles. If Seller determines that Buyer’s Metered or Total Usage, (a) asestablished by the DSP has materially changed or, (b) is likely to materially change, in either case, as compared to past practice or the historical data provided by the DSP for Buyer’s Delivery Points, Seller may, in addition to other remedies provided for herein, add to the amount paid by Buyer, as specified in the Table 3, Other Charges, Section 6.2 above, the amount necessary to account for Seller’s incremental costs resulting from or likely to result from, as applicable, the change to Metered or Total Usage.

**7.2 On-Site Generation Disclosure:** The Buyer hereby represents and warrants to Seller that there is no existing on-site generation installed at any of Buyer’s Delivery Point(s) set forth in this Sales Confirmation, except as listed in **Table 4** below.

**Table 4:**

|  |  |  |
| --- | --- | --- |
| **Facility Name** | **Generation Type** | **Nameplate Capacity** |
|  |  |  |

**7.3 Baseline Usage** shall mean historical usage as measured by the DSP for the most recent twelve (12) months period of usage prior to the start date, and as provided in **Table 5** below.

**Table 5 (MWh):**

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Jan** | **Feb** | **Mar** | **Apr** | **May** | **Jun** | **Jul** | **Aug** | **Sep** | **Oct** | **Nov** | **Dec** |
| xx | xx | xx | xx | xx | xx | xx | xx | xx | xx | xx | xx |

**7.4 Usage Beyond Expiration**: In the event Buyer does not execute a new Sales Confirmation timely manner prior to the Sales Confirmation Expiration Date, whether by expiration or termination, then Electricity may continue to be supplied hereunder following the Expiration Date on a month to month basis until a new Sales Confirmation is entered into by the Parties (the “Transition Period”). In lieu of the pricing described in this Agreement, during the Transition Period Buyer shall compensate the Seller for any Metered or Total Usage based on the pricing in **tables 2, and 3** in the duly executed Sales Confirmation for the ESA(s) plus five dollars ($5.00) per MWh (the **“**Transition Rate**”** or “TR**”**). The amount owed by Buyer to Seller during the Transition Period shall be the product of the Transition Rate, and as applicable, the Metered Usage, or Total Usageadjusted to include Distribution and Transmission Losses.

**7.5 Electric Service Accounts:** Buyer is permitted to terminate an Electric Service Account (“ESA”) listed within a Sales Confirmation, Section 1 above, provided that there is no Event of Default by Buyer, and any such ESA to be terminated are located within the DSP area currently served by Seller. In the event that ESAs are terminated, the Parties shall modify the ESA list accordingly via an duly authorized Amendment to the Sales Confirmation.

**7.6** **DSP Status**. Buyer shall be solely responsible for obtaining and maintaining its status with the DSP as a direct access customer. Buyer’s failure to obtain and/or maintain direct access status shall not excuse Buyer’s performance hereunder. Buyer represents and warrants to Seller that it understands: (i) certain risks are inherent in each Transaction, including the risk that the State of California will suspend or terminate direct access or impose surcharges upon direct access participants; and (ii) the suspension or termination of direct access due to Buyer’s failure to obtain or maintain its direct access customer status shall not excuse Buyer’s performance or payment under this Agreement; but Seller in its sole discretion may deem such termination, suspension or failure to obtain or maintain direct access status of Buyer an Event of Default and exercise its rights in connection therewith. Buyer shall provide data Seller deems necessary to submit a direct access service request to its DSP for approval to let Seller act as Buyer’s Energy Services Provider (“ESP”) and will cooperate with Seller as necessary to let Seller act as Buyer’s ESP with respect to its DSP, Transmission Operator and any third parties to allow Seller to perform its obligations hereunder. Buyer shall promptly execute releases or authorizations Seller deems necessary to perform its obligations hereunder.

**7.7 Certain Rights Post Termination**. If following termination of this Agreement (whether in whole or in part), for any reason the ESAs remain designated by the DSP and/or the ISO as being served by Seller, Seller may, consistent with Law, continue to serve such ESAs(s) on a month-to-month basis as per the process described above in Section 6.4, Usage Beyond Expiration. This Agreement will continue to govern the provision of service during extended term of service.

**7.8 Notices:** See Agreement, Appendix C, Section 10, Notices for information regarding notices.

**7.9 Invoices and Payment**: See Agreement, Appendix B, Section 6, Invoicing Instructions for information regarding the invoicing and payment process.

**7.10** For Emergencies, Outages and Equipment Service, call the respective DSP noted below in **Table 6.** For verification purposes, use your DSP Account Number.

**Table 6, DSP Contact Information:**

| **DSP** | **Contact Number** |
| --- | --- |
| Pacific Gas & Electric | (800) 743-5002 |
| Southern California Edison | (800) 611-1911 |
| San Diego Gas & Electric | (800) 336-7343 |

**END OF APPENDIX G**

**APPENDIX H**

**UNRUH CIVIL RIGHTS ACT AND**

**CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION**

Pursuant to Public Contract Code (“PCC”) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the Buyer for a solicitation of goods or services of $100,000 or more, or (ii) entering into or renewing a contract with the Buyer for the purchase of goods or services of $100,000 or more.

**CERTIFICATIONS:**

1. Seller is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);

2. Seller is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);

3. Seller does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); **and**

4. Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the Seller to the certifications made in this document.

|  |  |  |
| --- | --- | --- |
| *Seller Name (Printed)* | | *Federal ID Number* |
| *By (Authorized Signature)* | | |
| *Printed Name and Title of Person Signing* | | |
| *Date Executed* | *Executed in the County of \_\_\_\_\_\_\_\_\_ in the State of \_\_\_\_\_\_\_\_\_\_\_\_* | |

**END OF APPENDIX H**

**END OF AGREEMENT**

1. For additional details regarding CCR Hourly Settlements – please see this webpage: “<http://www.caiso.com/market/Pages/ProductsServices/CongestionRevenueRights/Default.aspx>” [↑](#footnote-ref-2)