

**EXH. GA-9C
DOCKETS UE-240004/UG-240005
2024 PSE GENERAL RATE CASE
WITNESS: GILBERT ARCHULETA**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-240004
Docket UG-240005**

**EIGHTH EXHIBIT (CONFIDENTIAL) TO THE
PREFILED DIRECT TESTIMONY OF**

GILBERT ARCHULETA

ON BEHALF OF PUGET SOUND ENERGY

REDACTED VERSION

FEBRUARY 15, 2024

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**DEMAND RESPONSE AGREEMENT
NO. CW2269358**

BETWEEN

PUGET SOUND ENERGY, INC.

AND

AUTOGRID SYSTEMS, INC.

DATED: July 14th, 2023

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DEMAND RESPONSE AGREEMENT

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EXHIBITS

Exhibit A: MARKETING, RECRUITMENT AND RETENTION

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DEMAND RESPONSE AGREEMENT

This DEMAND RESPONSE AGREEMENT, dated as of July 14th, 2023 (“Execution Date”), is entered into by and between:

- (1) Puget Sound Energy, Inc. (“PSE”); and
- (2) AutoGrid Systems, Inc., a Delaware corporation, located at 255 Shoreline Dr. #350, Redwood City, CA 94065 (“Seller” or “AutoGrid”).

PSE and Seller are sometimes referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, PSE received approval from the Washington Utilities and Transportation Commission (“WUTC”) in Order 01 issued in Docket UE-210878 on January 27, 2022 to issue a request for proposals for the supply of distributed energy resources, including demand response, in order to fulfill Clean Energy Transformation Act (“CETA”) compliance requirements and in accordance with Order 05 issued in Docket UE-200413 on March 25, 2021 (the “2022 DER RFP”);

WHEREAS, PSE issued the 2022 DER RFP on February 7, 2022 to bidders;

WHEREAS, Seller operates a demand response business in PSE’s electric utility service territory, which provides firm demand response capacity by reducing peak demand through the use of residential behavioral demand response (“BDR”), residential thermostat load controls (“Thermostat”), residential battery energy storage (“BESS”), commercial and industrial (“C&I”) demand response load controls, and electric vehicle charging and electric vehicles (“EVSE”), as further described herein;

WHEREAS, the Parties entered into [that certain AutoGrid System Services Agreement No. CW2247945 for the right of access to and use of the AutoGrid Solutions and AutoGrid Platform and other services as specified therein (“AutoGrid Software Agreement”)];

WHEREAS, Seller submitted a demand response proposal in response to the 2022 DER RFP; and

WHEREAS, PSE and Seller desire to enter into an agreement in connection with the 2022 DER RFP whereby PSE will purchase from Seller, and Seller will provide, firm demand response capacity for reductions in electrical energy load pursuant to the operation of a program in PSE’s service territory, as set forth in this Agreement (“Program”).

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

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ARTICLE 1. DEFINITIONS

1.1 Definitions.

The terms set forth below, when used in this Agreement, shall have the meanings set forth below. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense.

“Abnormal Weather Event” means a period in which the average peak temperature deviates by more than 20 degrees from the past 5 year historical average peak temperature for such same period

“Actual Load Reduction” means, for each Interval during a Dispatch Event, the amount in MW verified in accordance with Appendix 1 by which the aggregate electric energy usage of all Participating Facilities for such Interval differs from the Baseline Energy Usage applicable to such Interval, which may be a positive or negative number.

“Agreement” means this Demand Response Agreement and the Exhibits, Schedules and Appendices hereto, which are hereby incorporated herein by reference, as the same may be amended, modified or supplemented from time to time.

“Annual Load Reduction Targets” has the meaning ascribed to it in Appendix 2.

“Applicable Laws” has the meaning ascribed to it in Section 15.1.

“Baseline Energy Usage” means, for each Interval, the sum of Facility Baseline Usages for all Participating Facilities.

“BDR” has the meaning ascribed to in the recitals.

“BDR Resource” is a residential Eligible Facility that has been certified and verified to provide dispatchable BDR capacity for the Program.

“BESS” has the meaning ascribed to in the recitals.

“BESS Resource” is a residential Eligible Facility that has been certified and verified to provide dispatchable BESS capacity for the Program.

“Business Day” means Mondays through Fridays, excluding Holidays.

“C&I” has the meaning ascribed to in the recitals.

“C&I Resource” is a commercial Eligible Facility that has been certified and verified to provide dispatchable C&I-sourced demand response capacity for the Program.

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“Capacity Delivery Month” means a calendar month within the Program Period.

“Capacity Performance Shortfall” has the meaning ascribed to it in Section 8.2.

“Capacity Performance Shortfall Amount” has the meaning ascribed to it in Section 8.2.

“Capacity Shortfall Amounts” has the meaning ascribed to it in Section 8.2.

“CETA” has the meaning ascribed to it in the recitals.

“Claims and Losses” has the meaning ascribed to it in Section 14.1.

“Clean Energy Transformation Act” means Chapter 19.405 RCW.

“Committed Capacity Shortfall” has the meaning ascribed to it in Section 8.2.

“Committed Capacity Shortfall Amount” has the meaning ascribed to it in Section 8.2.

“Committed Load Reduction” means, for every Interval of every Program Hour in each Capacity Delivery Month, the amount, in megawatts (“MW”), of load reduction from the Participating Load that Seller commits to make available to PSE, in accordance with the requirements of Section 8.1 and Appendix 2.C.

“Committed Load Reduction Assumed Duration” shall mean two hours.

“Confidential Information” has the meaning ascribed to it in Section 18.5.1.

“Customer Benefits Plan” has the meaning ascribed to it in Section 18.14.5.

“Customer Consent to Disclosure” means an instrument, in the form of Exhibit B attached hereto, under which the PSE customer named therein consents to its electric energy usage data being shared with Seller.

“Customer Service Metrics” has the meaning ascribed to it in Section 8.5.

“Data Pulse Equipment” means a single pulse initiator providing a Form C contact closure (KYZ) and any equipment or appurtenances, including a load profile card, a KYZ pulse initiator, junction boxes, fuses and terminal strips.

“Day-of Load Adjustment” has the meaning ascribed to it in Appendix 1.

“Demand Response Software” means Seller’s web-based interface capable of providing near real-time energy profiling and Program Event dispatch management, as further described in Section 7.3.1.

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“Dispatch Event” means an event dispatched by PSE whereby Seller is called upon to reduce electric energy usage at one or more Participating Facilities.

“Dispatch Period” means the period for the relevant Dispatch Event set forth in a notification issued by PSE pursuant to Section 4.2.

“Dispatch Protocol and Constraints” means those resource-specific requirements identified in Appendix 3 in the sections titled “Dispatch Protocol and Constraints.”

“Eligible Facility” has the meaning ascribed to it in Section 3.1.

“Emergency Condition” means a condition or situation, as determined by PSE in a non-discriminatory manner, that is imminently likely to: (1) endanger life or property; (2) cause a material adverse effect on the security of, or damage to PSE’s electric system or the electric systems of others to which PSE’s electric system is directly connected; or (3) cause the failure of transmission or distribution facilities or generation supply that could adversely affect reliability or meeting expected load obligations. A North American Electric Reliability Corporation Energy Emergency Alert of level 2 (EEA 2) or higher, system restoration and black start shall be considered Emergency Conditions.

“Emergency Program Event” means a Dispatch Event in response to an Emergency Condition.

“EVSE” has the meaning ascribed to in the recitals.

“EVSE Resource” is a residential Eligible Facility that has been certified and verified to provide dispatchable EV charging capacity for the Program.

“Event of Default” has the meaning ascribed to it in Section 10.3.

“Facility Baseline Usage” has the meaning ascribed to it in Appendix 1.

“Fitch” means Fitch Ratings, Inc. and any successor thereto.

“Force Majeure Event” means any event or circumstance which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of reasonable diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

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- (a) Subject to the satisfaction of the foregoing requirements, events that could qualify as Force Majeure include, but are not limited to, the following:
- (i) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action;
 - (ii) any effect of unusually severe natural elements, such as fire, subsidence, earthquakes, floods, tornadoes, storms, lightning, or similar cataclysmic occurrence or other unusual natural calamities;
 - (iii) except as set forth in sub-section (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);
 - (iv) explosion or accident;
 - (v) governmental action or inaction;
 - (vi) impacts associated with any pandemic or epidemic (including COVID-19), but only if the prevention or hindrance of the affected Party's ability to perform its obligations under this Agreement is a result of (A) work not being exempt from any restrictions on work imposed by a governmental authority or any other order, rule, regulation or action or delays by any governmental authorities, including permitting delays, not in effect and/or applicable to the Project as of the Effective Date and (B) the affected Party being unable to employ additional commercially reasonable safeguards or other procedures necessary to protect the reasonable safety of its personnel while performing work; and
 - (vii) any network or internet failure by reason of a computer virus or cyberattack.
 - (viii) any electric power grid outage that compromises the ability for distributed energy resources to provide grid services
- (b) Force Majeure shall not be based on:
- (i) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic;
 - (ii) PSE's inability to economically to use or resell products and/or services purchased under this Agreement;

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- (iii) Seller's inability to provide the products and/or services required under this Agreement economically notwithstanding the existence of this Agreement;
- (iv) Seller's ability to sell the products and/or services required under this Agreement at a price greater than the price set forth in this Agreement;
- (v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by PSE pursuant to this Agreement;
- (vi) a strike, work stoppage or labor dispute arising out of or limited only to any one or more of Seller, Seller's affiliates, or any other third party employed by Seller;
- (vii) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party; or
- (viii) any breakdown, degradation or malfunction of equipment installed, operated, maintained, and/or used by Seller to perform its obligations under this Agreement (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure.

"Good Industry Practice" means (a) any of the practices, methods, and acts that when engaged in are commonly used in prudent electric utility engineering and operations during the relevant time period to operate and maintain electric equipment lawfully and with safety, reliability, efficiency, and expedition; or (b) if no such practices, methods, and acts exist, then those practices, methods, and acts that, in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with Applicable Law, safety, reliability, efficiency, and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts. With respect to each Participating Facility, Good Industry Practice(s) includes taking reasonable steps to ensure that:

- (1) equipment, materials, resources, and supplies, including spare parts inventories, are available by Seller to meet the Participating Facilities' needs;
- (2) Seller has sufficient operating personnel available at all times and is adequately experienced and trained and licensed as necessary to operate the Seller Equipment properly, efficiently, and in coordination with PSE and is capable of responding to reasonably foreseeable Emergency Conditions;

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- (3) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (4) appropriate physical, computer, network, and internet security measures are implemented to protect the Seller Equipment and Seller's ability to communicate with PSE;
- (5) appropriate monitoring and testing are performed to ensure Seller Equipment is functioning as designed;
- (6) Seller Equipment is not operated in a negligent manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or PSE's distribution grid or contrary to Applicable Laws or without regard to defined limitations; and
- (7) Seller Equipment will function properly at the Participating Facilities.

"Holidays" means any day recognized as a holiday by the North American Electric Reliability Corporation.

"Indemnified Party (Parties)" has the meaning ascribed to it in Section 14.1.

"Initial Term" has the meaning ascribed to it in Section 2.2.

"Interval" means a [15 minute] clock time interval, provided that with respect to an Emergency Program Event, the first Interval will begin within at least 10 minutes of notification issued in accordance with Section 4.2 and end at the start of the following 15 minute clock interval and the last Interval will end upon the earlier of notification by PSE that the Emergency Condition has ended or the expiration of the Dispatch Period for such Emergency Program Event.

"Interval Meter" has the meaning ascribed to it in Section 3.1(a).

"Late Payment Rate" means the lesser of (i) the rate per annum equal to the "Monthly" Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication, or (ii) the maximum interest rate permitted under Applicable Laws.

"Load Reduction Performance Factor" means: (i) for a particular Capacity Delivery Month, the summation of the Actual Load Reduction during all Intervals in such Capacity Delivery Month divided by the summation of the Committed Load Reduction in effect during such Intervals, and (ii) for a particular Interval, the Actual Load Reduction during such Interval divided by the Committed Load Reduction (MW) in effect for such Intervals.

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“Marketing Materials” has the meaning ascribed to it in Section 6.1.

“Megawatt” means 1,000,000 watts, rounded to the nearest watt.

“Meter Installation Contract” has the meaning ascribed to it in Section 7.2.1.

“Metering Devices” means all PSE-owned meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the electric energy usage at a Participating Facility.

“Monthly Capacity Payment” has the meaning ascribed to it in Article 5.

“Monthly Capacity Payment Rate” means the amount due to Seller each Capacity Delivery Month per MW of Committed Load Reduction, as set forth in Article 5.

“Monthly Load Reduction Targets” has the meaning ascribed to it in Appendix 2.

“Monthly Invoice” has the meaning ascribed to it in Section 9.1.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Original Equipment Manufacturer” or “OEM” means the original equipment manufacturer of Seller Equipment for BDR, Thermostat, BESS, C&I, and EVSE Resources.

“Participating Customer” means the customer named on PSE’s account for a Participating Facility.

“Participating Customer Contract” means a contract between Seller and Participating Customer, governing Participating Customer’s participation in the Program, which may be executed digitally via an online enrollment process provided that such execution is binding and legally enforceable on both Seller and Participating Customer.

“Participating Facility” means an Eligible Facility participating in the Program pursuant to Article 3.

“Participating Load” means for any Interval the aggregate load in MW subject to curtailment and verified in accordance with Appendix 1 of all of the Participating Facilities under Participating Customer Contracts as of such date.

“Party Representative” has the meaning ascribed to it in Section 11.2.

“Peaking Capacity Program Event” means any Dispatch Event (excluding any Emergency Program Events) during Program Hours.

“Performance Deficiency” has the meaning ascribed to it in Section 8.6.

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“Program” has the meaning set forth in the Recitals in this Agreement.

“Program Day” means any calendar day during the Program Period.

“Program Events” means, collectively, Peaking Capacity Program Events, Emergency Program Events and Program Test Events.

“Program Hours” means 6:00am to 10:00pm Pacific time on Program Days.

“Program Period” means November 1st through March 31st and May 1st through September 30th of each Program Year.

“Program Season” means either the winter season of November 1st through March 31st or the summer season of May 1st through September 30th of a Program Year.

“Program Test Event” means a Dispatch Event for the purpose of testing the Program and Seller’s ability to respond to PSE’s dispatch.

“Program Year” means January 1st through December 31st of each year of the Term.

“Program Week” means any week (Sunday through Saturday) during the Program Period.

“Project Performance Standards” means all formulae and methodologies used to measure load reductions delivered under this Agreement for, but not limited to, the purpose of calculating any payments made by PSE to Seller hereunder, as described in Article 8 hereof.

“PSE Information” means (a) any project, design, roadmap, and architecture plans of PSE; (b) any personally identifiable information about persons or entities that Seller obtains from any source, whether disclosed orally or accessed in written, electronic, or other form or media in connection with the Agreement, which concerns prospective and existing customers or employees of PSE, or any third party PSE has a business relationship with, including names, addresses, telephone numbers, e-mail addresses, social security numbers, credit card numbers, call-detail information, purchase information, product and service usage information, account information, credit information and demographic information; and (c) any aggregate data created or derived from the previously described personally identifiable information. Notwithstanding the foregoing, PSE Information will not include any information that: (x) was already in Seller’s possession or known to Seller prior to being disclosed or provided Seller, provided, that, the source of such information or material was not bound by a contractual, legal or fiduciary obligation of confidentiality to PSE or any other party with respect thereto, (y) was or is obtained by Seller from a third party completely independently of this Agreement and its performance, provided, that such third party was not bound by a contractual, legal or fiduciary obligation of confidentiality to PSE or any other party with respect to such information or material and does not have a business relationship with PSE, or (z) is independently developed by the recipient party without reference or regard to PSE Information.

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“PSE Event of Default” has the meaning ascribed to it in Section 10.2.

“Receiving Party Representatives” has the meaning ascribed to it in Section 18.5.2.

“Reputational Event” has the meaning ascribed to it in Section 12.3.2.

“S&P” means S&P Global Market Intelligence, a division of S&P Global, Inc., and any successor thereto.

“Seller Equipment” has the meaning ascribed to it in Section 7.1.1.

“Seller Event of Default” has the meaning ascribed to it in Section 10.1.

“Service Commencement Date” means [November 1, 2023].

“Summer Period” means May 1st through September 30th.

“Target Committed Load Reduction” has the meaning ascribed to it in Section A of Appendix 2.

“Term” has the meaning ascribed to it in Section 2.2.

“Termination Costs” has the meaning ascribed to it in Section 10.3.2.

“Termination Fee” has the meaning ascribed to it in Section 10.4(b).

“Termination Gains” has the meaning ascribed to it in Section 10.3.2.

“Termination Losses” has the meaning ascribed to it in Section 10.3.2.

“Termination Payment” has the meaning ascribed to it in Section 10.3.2.

“Testing Shortfall” has the meaning ascribed to it in Section 8.2.3.

“Testing Shortfall Amount” has the meaning ascribed to it in Section 8.2.3.

“Thermostat” has the meaning ascribed to in the recitals.

“Thermostat Resource” is a residential Eligible Facility that has been certified and verified to provide dispatchable thermostat-based demand response capacity for the Program.

“Unadjusted Baseline” has the meaning ascribed to it in Appendix 1.

“Winter Period” means November 1st through March 31st.

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1.2 Interpretation.

In this Agreement, unless otherwise stated:

1.2.1. Any references to:

- (a) any Article, Section, Schedule, Appendix, Exhibit or other provision thereof, shall be construed, at any particular time, as including a reference to the Article, Section, Schedule, Appendix, Exhibit or the relevant provision thereof as it may have been amended, modified or supplemented;
- (b) any Party or authority entity in this Agreement includes that Party's successors and permitted assigns or, in the case of any governmental authority, any governmental authority succeeding to its functions and capacities;
- (c) a month shall be construed as a reference to a calendar month; and
- (d) a particular Section, Schedule, Exhibit or Appendix shall be a reference to the relevant Section, Schedule, Exhibit or Appendix in or to this Agreement.

1.2.2. Words in the singular may be interpreted as referring to the plural and vice versa, and words denoting natural persons may be interpreted as referring to corporations and any other legal entities and vice versa.

1.2.3. Whenever this Agreement refers to a number of days, such number shall refer to the number of calendar days unless Business Days are specified. A requirement that a payment be made or an act be performed on a day that is not a Business Day shall be construed as a requirement that the payment be made or act performed on the next following Business Day.

1.2.4. The words "include" and "including" are to be construed as being at all times followed by the words "without limitation".

1.2.5. Words not otherwise defined herein that have well-known and generally acceptable technical or trade meanings are used herein in accordance with such well-recognized meanings.

1.2.6. In the event of a conflict between the terms of any Schedule or Exhibit and the terms in the body of this Agreement, the terms in the body of this Agreement shall take precedence.

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ARTICLE 2. TERM

2.1 Initial Term.

The initial term of this Agreement (the “Initial Term”) will commence on the Execution Date and, unless sooner terminated under this Agreement, shall remain in full force and effect through [April] [30], 20[29].

2.2 Renewal.

No later than 180 days prior the expiration of the Initial Term, the Parties will meet and discuss whether to extend the Initial Term of this Agreement by mutual agreement.

ARTICLE 3. PARTICIPATING FACILITIES

3.1 Participating Facility.

Only those Eligible Facilities designated by Seller through the enrollment by Seller via the [Demand Response Software] shall be a Participating Facility, provided that any Eligible Facility proposed to be designated by Seller as a Participating Facility must meet each of the criteria set forth in Sections 3.1(a) through 3.1(e). An “Eligible Facility” is a building or facility located in PSE’s electric service territory that:

- (a) Has a PSE-approved interval meter (“Interval Meter”) installed as part of its Metering Devices;
- (b) Receives retail electric service from Utility under an Utility account specific to that building or facility; and
- (c) The PSE customer of record for which has executed and delivered a Customer Consent to Disclosure, and entered into a fully-executed Participating Customer Contract, both of which may be executed electronically as part of the enrollment process;
- (d) Is equipped with one or more eligible devices supported by Seller programs in the category of “BESS Resource”, “Thermostat Resource”, “C&I Resource,” “Water Heater,” and/or “EV or EVSE Resource,” (or other categories to be added as per Appendix 2) or can modify the site load as a “BDR Resource”
- (e) Is compliant with the applicable requirements of CETA.

If the Participating Facility ceases to be an Eligible Facility, and is unable to re-establish its status as an Eligible Facility promptly but in any event within [30] Calendar Days, then it shall automatically cease being a Participating Facility as of the date of such termination, disconnection, or ineligibility. Furthermore, Seller will promptly remove a Participating Facility from enrollment via the Demand Response Software if such Participating Facility is

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not compliant with dispatch instructions issued in connection with this Agreement [5] or more times per Program Period.

3.2 Seller Covenants.

- (a) In addition to at all times complying with the requirements of Section 18.5, Seller shall not:
 - (i) Collect, access, use, maintain, or disclose any information provided by PSE under or in connection with this Agreement, including any PSE Information or PSE load or pricing forecasts, financial, technical, or other information, except for the purposes of carrying out this Agreement;
 - (ii) Sell or otherwise provide any PSE Information to any affiliate or third party, except (A) as required in connection with this Agreement, or (B) as required by Applicable Laws; or
 - (iii) Offer or sell any capacity, energy, demand response, ancillary services, or any electric product sourced from any Participating Facility or aggregated under this Agreement to any affiliate or third party.
- (b) Seller will not, and Seller will cause its affiliates not to, solicit or otherwise communicate with, any Participating Customer with respect to any products or services other than those that are part of the Program.

3.3 PSE Covenants

- (a) PSE agrees that under the Participating Customer Contract, Participating Customers may not switch participation from Seller's program to a substantially similar alternative offering for a period of three years from the date such Participating Customer is enrolled in the Program. Should PSE require specialized services for targeted communities or specific use cases, Seller will be given the first opportunity to propose an implementation of such services. If such specialized services are implemented outside of Seller program, Seller will work in good faith with PSE to ensure Participating Customers have the ability to participate in the most appropriate program offering.
- (b) Seller may propose to PSE increases in the Committed Load Reduction available from Participating Facilities through operational improvements or other means or providing new capabilities from the Participating Facilities that may be of value to PSE in connection with CETA. PSE will discuss Seller's proposal in good faith, including necessary amendments to the pricing and quantity provisions and other provisions of this Agreement to implement any agreed-upon changes, provided that no changes to this Agreement will be effective, absent mutual agreement of the Parties in writing.

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ARTICLE 4. PROGRAM EVENTS; PROGRAM TEST EVENTS

4.1 Availability.

4.1.1. From and after the Service Commencement Date, PSE may dispatch Peaking Capacity Program Events for a quantity up to the full Committed Load Reduction at any time during Program Hours pursuant to Section 4.2 below, and subject to Section 4.3 with respect to Program Test Events. Peaking Capacity Program Events shall continue no more than [4 hours] in any Program Day and be subject to the Dispatch Protocol and Constraints.

4.1.2. Peaking Capacity Program Events shall end upon the earlier of (a) cancellation by PSE of the event in the Demand Response Software, or (b) the expiration of the Dispatch Period, as the case may be.

4.1.3. PSE may dispatch multiple Peaking Capacity Program Events during a Program Period, provided that no more than 1 Peaking Capacity Program Event may be dispatched in any Program Day.

4.1.4. PSE may dispatch an Emergency Program Event for up to the full Committed Load Reduction at any time during a Program Year, subject to Section 4.2.2. PSE may dispatch multiple Emergency Program Events during a Program Year, provided that no more than 2 Emergency Program Events, which may be dispatched on a back-to-back basis, may be dispatched in any Program Day. PSE Emergency Program Events will not be included in the determination of the Load Reduction Performance Factor.

4.2 Notification.

4.2.1. Subject to Section 4.1, PSE may dispatch Program Events by issuing a dispatch within Seller's utility dispatch portal, to which authorized PSE personnel will have access throughout the Initial Term of this Agreement.

4.2.2. Issuing a dispatch for Peaking Capacity Program Events must specify that such Program Events will begin and end at the beginning of the first Interval and the end of the last Interval of the Dispatch Period, provided that such first Interval is at least 4 hours after the time at which such dispatch is issued. Seller will issue dispatch notifications to Participating Customers in accordance with the Dispatch Protocol and Constraints for each resource type. Notwithstanding the foregoing, Seller shall use its best efforts to provide all available curtailment in response to a dispatch for an Emergency Program Event within at least 10 minutes of prior notification.

4.2.3. Prior to each Program Week (which interval may be changed to bi-weekly or monthly upon mutual written agreement of the Party Representatives), PSE will use commercially reasonable efforts to provide Seller with information on the likelihood of a Dispatch Event for each Program Day of the following program week using data such as load and pricing forecasts, which would help to indicate a need or lack thereof to dispatch a

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Program Event. If, during a given Program Week, new data changes the likelihood that PSE will dispatch a Program Event on a given Program Day, PSE will use commercially reasonable efforts to inform Seller of such changes. Seller will use such information to help Participating Customers plan their weekly operations and prepare for potential Program Events. None of the information provided by PSE or used by Seller for customer communications limits or alters in any manner PSE's ability to dispatch Program Events as defined throughout this Agreement and any failure to provide information pursuant to this provision will not constitute breach of this Agreement or a PSE Event of Default.

4.3 Program Test Events.

4.3.1. In each Program Year, PSE shall have the right to dispatch up to 2 Program Test Events on any Program Days during the Program Period. Except as otherwise provided herein, Program Test Events shall be treated as exempt from the performance provisions of Article 8. Success of test events will be graded based on metrics listed in 4.3.2. The Parties agree to work together to set the date and time for each Program Test Event using commercially reasonable efforts to choose a Program Day and time that reflects the typical electric system conditions under which another Peaking Capacity Program Event would be dispatched, such as near peak demand conditions, provided that PSE will have the right to make the final decision of when to dispatch a Program Test Event; provided, however, that PSE will provide a minimum notice to Seller of 24 hours. Furthermore, PSE may not dispatch Peaking Capacity Program Events within twenty-four hours following the end of a Program Test Event.

4.3.2. Notwithstanding Section 4.3.1, PSE may dispatch more than 2 Program Testing Events in a Program Year if Seller is unable, with respect to any Program Testing Event, Peaking Capacity Program Event, or Emergency Program Event in such Program Year, to validate successful transmission and receipt of dispatch instructions to all participating OEM program partners and 95% of Participating Facilities. In the event Seller fails to meet these performance metrics for 2 or more Program Testing Events in a Program Season, it will be considered a Performance Deficiency in that Program Season, as defined in Section 8.6.

4.4 Event Reporting.

Seller shall provide PSE with written reports of Program Event performance as follows:

- (a) Initial Program Event performance reporting within [3 Business Days] following a Program Event and availability of meter data. Reporting will include estimated Program Event performance based on available data and Participating Facility information including electric energy usage data from Participating Facilities and Participating Facilities' responses to Program Event notifications; and
- (b) Final Program Event performance reporting [within 10 business days of receipt of electric energy usage data from PSE for each Participating Facility]; and

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- (c) Cumulative Program Event performance reporting within 30 days following the end of each Capacity Delivery Month for all Program Events within a given Capacity Delivery Month.

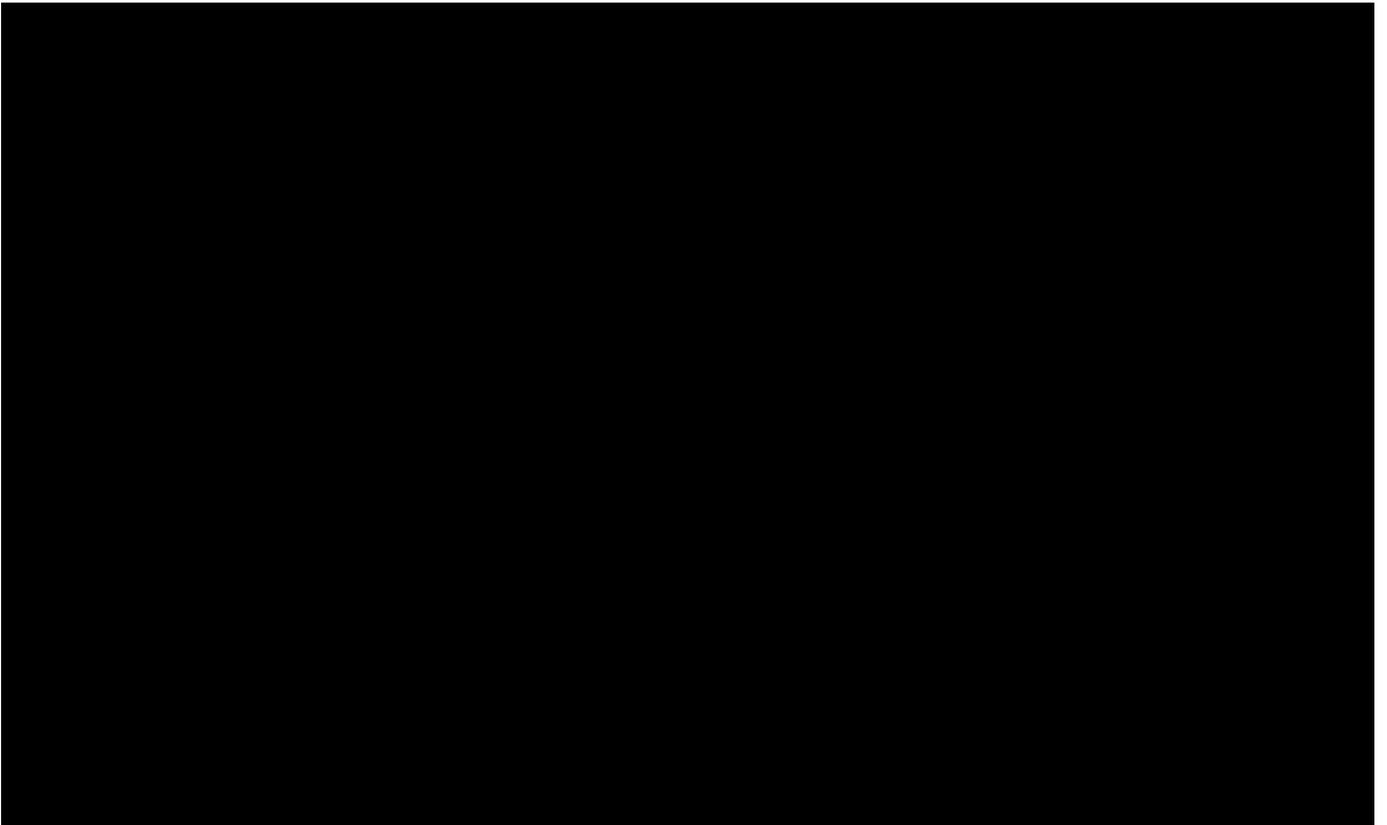
4.5 Program Additions and Modifications.

The Parties recognize and agree that additions and modifications to the Program may be desired and needed by PSE or AutoGrid to enhance the operational functionality and capability of this Program over the Term. As needed, the Parties agree to work in good faith to amend this Agreement to enhance the operational functionality and capability of this Program in a manner that is commercially, technically, and financially viable for both Parties. For the avoidance of doubt, any such addition or modification requires mutual agreement of the Parties and shall occur in writing pursuant to Section 18.8.

ARTICLE 5. [PRICING]

5.1 Monthly Capacity Payment.

From and after the Service Commencement Date until the expiration or earlier termination of the Term, PSE shall pay, in accordance with Article 9 below, a monthly capacity payment in respect of each Capacity Delivery Month during the Initial Term (“Monthly Capacity Payment”) in the amount equal to the Monthly Capacity Payment Rate multiplied by either:



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ARTICLE 6. MARKETING, RECRUITMENT AND RETENTION

6.1 Co-Branding and Customer Interaction.

In connection with all activities undertaken in performance of this Agreement, Seller will comply with PSE's vendor requirements and policies set forth in this Agreement, including Exhibit A, as such vendor requirements and policies may be updated by PSE from time to time.

6.2 Marketing Plan and Marketing Materials.

PSE and Seller shall conduct the marketing, recruitment, and retention activities ("Marketing Activities") as described in Exhibit A, unless otherwise specified herein, to market to and recruit Eligible Facilities, and retain Participating Facilities. Seller may work with other vendors to support the marketing, recruitment, and retention activities, including vendors identified and preferred by PSE. Seller shall not, without the prior approval of PSE,

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which approval may be withheld in PSE's sole discretion, (a) use the name, trademark, or logo of PSE on any advertising, marketing, promotional, event/outreach, email, website, social media or other materials or plans of any format ("Marketing Materials"), provided that PSE's name will be used in the Participating Customer Agreement, (b) state, imply or in any way represent to third parties, including existing or potential Participating Customers, that PSE has endorsed, sponsored, or approved, or is affiliated with, Seller; or (c) distribute, publish, disseminate or use any Marketing Materials that specifically reference PSE. If Seller wishes to distribute, publish, or disseminate any Marketing Materials, Seller must deliver the proposed Marketing Materials to PSE for review and approval, not to be unreasonably withheld. All Marketing Activities conducted by PSE and Seller in connection with the Program will comply with all Applicable Laws. Nothing in this Section shall prohibit Seller from sending routine business communications to, or conducting meetings with, potential commercial or industrial Participating Customers, subject to Seller's compliance with the foregoing provisions of this Section 6.1 and other applicable provisions of this Agreement.

6.3 Training.

Seller shall, at Seller's sole cost and expense, provide [20] hours of in-person training (exclusive of any time required to prepare materials for such in-person training) per Program Year to PSE and its employees in matters related to the terms and implementation of this Agreement, including the dispatch of Program Events, for the purpose of educating PSE's support staff, account representatives, and other employees in any customer relations role. For the avoidance of doubt, instances of engagement between Seller personnel and PSE personnel such as Key Account Managers, with regard to targeting, recruiting, and retaining PSE customers for purposes relating to participation in this Program will not be considered Training.

6.4 News Release.

Neither Party shall issue a news release or other public statement regarding this Agreement nor the transactions contemplated hereby without the prior approval of the other Party, except to the extent required by Applicable Laws or in accordance with the requirements of any recognized stock exchange. If either Party is contacted by any media, including but not limited to, internet media, broadcast media, print media, concerning this Agreement, its performance, or the Program, the contacted Party shall inform the other Party of the contact and the Parties will coordinate on any response. For the avoidance of doubt, Seller will not communicate with any media regarding this Agreement and the transactions contemplated hereunder without the prior approval of PSE.

**ARTICLE 7. EQUIPMENT INSTALLATION, MAINTENANCE AND SOFTWARE;
OPERATIONAL REQUIREMENTS**

7.1 Seller Equipment.

7.1.1. Installation.

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At Seller's sole cost and expense, Seller shall be responsible for constructing and installing or causing the construction or installation of all Program equipment and software (excluding Metering Devices and Data Pulse Equipment installed by PSE and any enabling equipment independently purchased and installed by a Participating Customer), and upgrades thereto, necessary to (i) monitor each Participating Facility's electric energy usage, (ii) communicate with the Participating Customers, and (iii) control each Participating Facility's electric energy usage to comply with dispatch instructions issued under this Agreement (collectively, "Seller Equipment"). Seller shall ensure that all Seller Equipment is constructed and installed in a good and workmanlike manner and in accordance with Good Industry Practice.

7.1.2. Operation and Maintenance.

Seller shall be responsible, at its sole cost and expense, for all operation, maintenance, replacement, and repair of Seller Equipment in accordance with Good Industry Practice. Seller shall cause all maintenance to be performed on a basis that ensures reliable long-term and safe operation, and performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools. Seller will use its best efforts to perform all repair work at the earliest opportunity during its normal work schedule (but in any event, no later than ten (10) calendar days after being contacted by a Participating Customer or PSE). Alternatively, Seller shall have the right to remove such Participating Facility instead of performing the repair work, subject to consent by PSE (such consent not to be unreasonably withheld).

7.1.3. Permits, Licenses; Real Property Rights.

Seller shall be responsible for obtaining, at its sole cost and expense, all governmental approvals and permits, third party licenses or consents, and real property rights necessary for Seller to install, construct, operate, replace, repair, maintain and remove all Seller Equipment for the duration of Initial Term of this Agreement.

7.1.4. Disablement and Removal.

Seller will remotely unenroll and make dormant all Seller Equipment at the conclusion of this Agreement. Seller, at Seller's sole cost, will uninstall and remove all Seller Equipment as requested in writing by any Participating Customer within 90 days after the expiration or termination of this Agreement.

7.1.5. No Warranty.

PSE MAKES NO WARRANTY AS TO FITNESS OF PURPOSE, THE OPERATION OF, OR ACCURACY OF THE DATA PROVIDED THROUGH, ANY SELLER EQUIPMENT OR OTHER TECHNOLOGY, AND TAKES NO RESPONSIBILITY FOR SELLER'S USE OF SUCH EQUIPMENT OR OTHER TECHNOLOGY AND DATA SUPPLIED THEREFROM.

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ARTICLE 8. PROJECT PERFORMANCE; LIQUIDATED DAMAGES

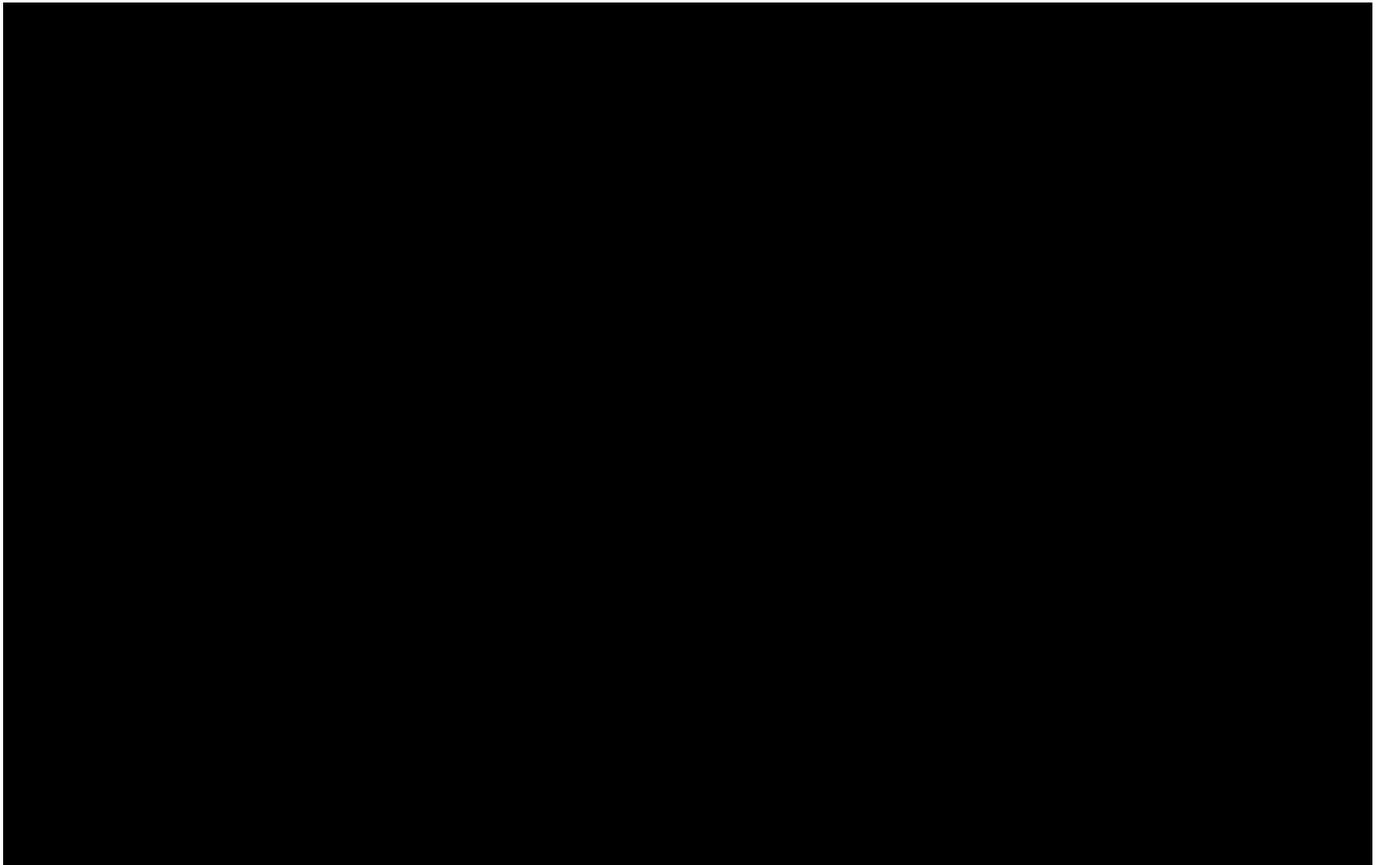
8.1 Committed Performance Level.

8.1.1. For every Interval of each Program Hour, Seller shall make available, and provide and deliver upon dispatch, to PSE the Committed Load Reduction in effect for each Interval during such Program Hour, subject to the Committed Load Reduction Assumed Duration and applicable Dispatch Protocol and Constraints for day-ahead dispatch. All Committed Load Reduction or Actual Load Reduction must be attributable to Participating Facilities.

8.1.2. For each Program Period during a Program Year and each Capacity Delivery Month, Seller will notify PSE of the Annual Load Reduction Targets, Monthly Load Reduction Targets, and Committed Load Reduction in accordance with the requirements and procedures set forth in Appendix 2.

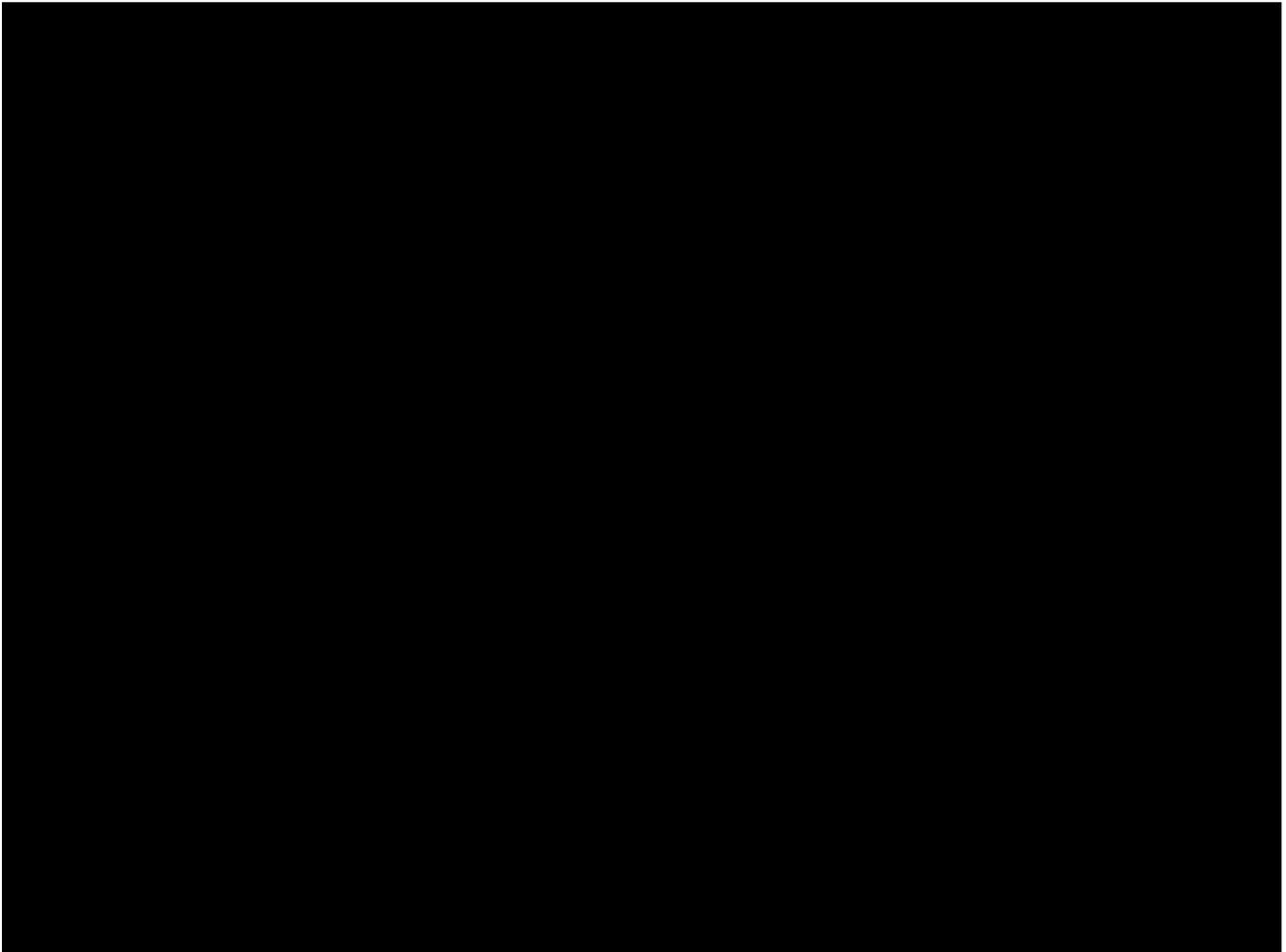
8.1.3 For each Capacity Delivery Month, the Committed Load Reduction must be made available by Seller to PSE in accordance with the requirements and procedures set forth in Appendix 2.

8.1.5. Seller shall specify the Committed Load Reduction made available in each Interval in each Capacity Delivery Month in the corresponding Monthly Invoice, as further described in Section 9.1 hereof.



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8.4 Baseline Performance Level.

The Unadjusted Baseline and Day of Load Adjustment shall be calculated in accordance with Appendix 1.

8.5 Customer Service Metrics; Annual Performance Evaluation.

8.5.1. Seller shall comply with the customer service metrics to be defined in forthcoming Statements of Work. In addition, PSE and Seller agree to complete, by December 1st of each Program Year, an annual performance evaluation, which shall assess Seller's performance with respect to meeting the Customer Service Metrics.

8.5.2. In connection with each performance evaluation, PSE may administer and disseminate to all Participating Customers a survey questionnaire concerning customer-facing activities performed by Seller in connection with this Agreement, which will be prepared by PSE and approved by both PSE and Seller (such approval not to be unreasonably withheld). PSE shall request that all Participating Customers complete the survey, either online, by phone or in writing. The survey will use a 1 to 10 scale with 1 being extremely poor performance and 10 being outstanding performance. An average score of greater than

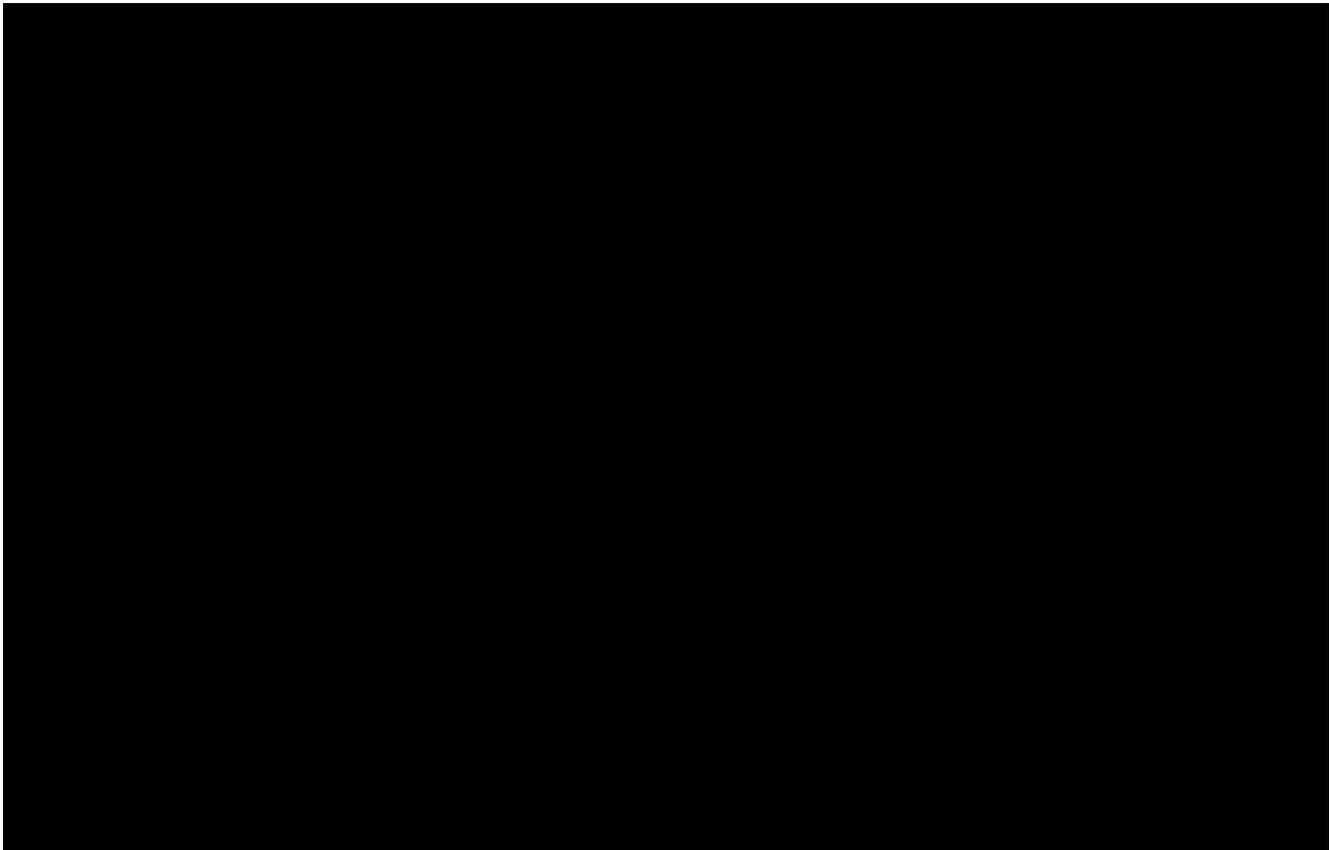
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7 on the survey questions (examples of survey questions to be provided in the Program SOW) is required with respect to customer-facing activities performed by Seller in connection with this Agreement.

8.5.3. In the event that an average score of greater than 7 with respect to the survey questionnaires submitted in connection with any annual survey is not achieved, PSE shall provide Seller with complete copies of each survey questionnaire. Seller shall have 60 Program Days to improve its performance. At the end of such 60-day period, PSE shall (i) re-submit survey questionnaires to those Participating Customers that ranked Seller at seven or below in the previous survey questionnaire and (ii) include completed re-submitted survey questionnaires in the original calculation to determine whether Seller received an average score of greater than seven on the survey questions listed above (i.e., the original survey questionnaire of each Participating Customer that is requested to complete a re-submitted survey questionnaire shall be discarded and replaced with such re-submitted survey questionnaire). If at any point, Seller exhibits gross negligence or unwillingness to work in good faith with PSE to achieve an average score of greater than 7 when taking into account the re-submitted survey questionnaires, PSE may, without liability to PSE, terminate this Agreement immediately upon delivery of written notice to Seller, subject to a 60-day cure period during which Seller will provide PSE with a corrective action plan and exercise best efforts to address and cure the circumstances underlying the deficiency.



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8.7 Resource-Specific Requirements.

In addition to the requirements set forth in Section 4.4 and the other sections of this Article 8, Seller will meet the resource-specific performance requirements set forth in Appendix 3, subject to the additional remedies for non-performance set forth therein.

ARTICLE 9. BILLING AND PAYMENT

9.1 Monthly Invoices.

9.1.1. No later than the 30th day of each month following a Capacity Delivery Month, Seller shall prepare and deliver to PSE an invoice (“Monthly Invoice”) of the Monthly Capacity Payment [and Energy Payment] payable in respect of such Capacity Delivery Month. Any adjustments necessary to reflect any permitted changes in the Monthly Capacity Payment or [Energy Payment] due or owed in respect of such Capacity Delivery Month shall be included in the following Monthly Invoice. Each Monthly Invoice shall include all documentation and calculations necessary to support the amounts set forth therein.

9.1.2. Statements, invoices and billings shall be delivered electronically to the following addresses:

If to Seller: invoices@auto-grid.com

If to PSE: if Supplier has established an Ariba trade relationship with PSE, Supplier will submit an electronic invoice and any other supporting documentation via the Ariba Network eProcurement portal (for the avoidance of doubt, Supplier may not charge PSE for Ariba membership or transaction fees);

9.2 Payment.

9.2.1. PSE shall make payment on the undisputed amount of a Monthly Invoice no later than 30 days after receipt of such Monthly Invoice. [In the event any Party is required to make any payment to the other Party under this Agreement (other than pursuant to a Monthly Invoice), such payment shall be made within 30 days after receiving notice of incurring such obligation to so pay.]

9.2.2. If a Party fails to pay the full amount due to the other Party (excepting any disputed amount) on or before the close of business on the due date, the owing Party shall pay interest on the unpaid amount at the Late Payment Rate. If a due date occurs on a day that is not a Business Day, interest shall begin to accrue on the next succeeding Business Day.

9.2.3. Unless otherwise specified in this Agreement, all payments required to be made by either Party under this Agreement shall be made by wire transfer, at the following addresses or accounts:

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9.3 Billing Disputes.

To resolve any billing dispute, the Parties shall use the procedures set forth in Section 11.5. When the billing dispute is resolved, the Party owing shall pay the amount owed within 5 Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed at the Late Payment Rate.

9.4 Offset.

PSE at any time may offset any and all undisputed amounts, including damages and other payments, that are past due and owed by Seller to PSE pursuant to this Agreement against any and all amounts that may be due and owing to Seller.

9.5 Payments to Participating Customers.

[Seller shall create and issue payments to Participating Customers in connection with such Participating Customers' participation in the Program in accordance with the Participating Customer Contract.]

ARTICLE 10. DEFAULT AND TERMINATION

10.1 Events of Default of Seller.

In addition to any other events specified as a Seller Event of Default, the occurrence of any one or more of the following events shall constitute a "Seller Event of Default":

- (a) Seller (i) becomes insolvent, generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, (ii) makes an assignment for the benefit of any creditor, or (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors, or have such petition filed or proceeding commenced against it which is not dismissed or unstayed for a period of 60 days;

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- (b) Seller assigns or transfers this Agreement or any right or interest herein, except as expressly permitted under Article 16;
- (c) Seller fails to maintain credit support as required by Section 17 and does not cure such failure within 5 Business Days;
- (d) Any material misrepresentation or omission by Seller in any report or notice required to be made or delivered by Seller to PSE, or undue delay or withholding of such data, report or Notice, which misrepresentation, omission or undue delay or withholding is not cured within ten (10) Business Days of PSE's written demand therefore;
- (e) Seller defaults on the due and timely payment of undisputed amounts of monies due hereunder when the same becomes due and payable, and such default continues for a period of 30 days after written notice thereof by PSE to Seller;
- (f) Seller intentionally or knowingly delivers, or attempts to deliver capacity reduction that is not produced by the Program and the Participating Customer Facilities;
- (g) Seller fails to meet its obligations under Section 7.3.2; or
- (h) Seller fails to perform or observe any other material covenant, representation, warranty, obligation or agreement required of Seller in this Agreement, other than a failure for which a specific remedy is provided, and such failure continues for a period of 30 days after written notice thereof by PSE to Seller.

10.2 Events of Default of PSE.

PSE shall be in material default of its obligations pursuant to this Agreement upon the occurrence of any one or more of the following events of default (each, a "PSE Event of Default"):

- (a) PSE (i) becomes insolvent, generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, (ii) makes an assignment or any general arrangement for the benefit of creditors, or (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or case under any bankruptcy or similar law for the protection creditors, or have such petition filed or proceeding commenced against it which is not dismissed or unstayed for a period of 60 days;
- (b) PSE assigns or transfers this Agreement or any right or interest herein, except as expressly permitted under Article 16;
- (c) PSE defaults on the due and timely payment of undisputed amounts of monies when the same becomes due and payable, and such default continues for a period of 30 days after written notice thereof by Seller to PSE; or

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- (d) PSE defaults in the performance or observance on its part of any other material covenant, representation, warranty, obligation or agreement required of PSE in this Agreement, and such default continues for a period of 30 days after written notice thereof by Seller to PSE.

10.3 Remedies.

10.3.1. If a Seller Event of Default or PSE Event of Default (“Event of Default”) occurs and is continuing, the non-defaulting Party may terminate this Agreement effective upon giving written notice thereof. Such notice will specify the date of termination, describe in reasonable detail the circumstances giving rise to the termination, and set forth the non-defaulting Party’s calculation of the Termination Payment in reasonable detail, together with appropriate supporting documentation.

[10.3.2. If the non-defaulting Party terminates this Agreement under Section 10.3.1, the defaulting Party will pay a “Termination Payment” equal to the positive amount (if any) of: (1) the sum of the non-defaulting Party’s Termination Costs and Termination Losses minus (2) the non-defaulting Party’s Termination Gains (“Termination Payment”). The Defaulting Party will pay the Termination Payment to the non-defaulting Party within ten (10) Business Days after the date of termination. “Termination Losses” means, with respect to the non-defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Termination Costs), resulting from termination of this Agreement for its remaining term, determined in a commercially reasonable manner. “Termination Costs” means, with respect to the non-defaulting Party, (a) all reasonable attorneys’ fees and expenses incurred by the non-defaulting Party in connection with the termination; (b) reasonable third party consultant fees and expenses incurred by the non-defaulting Party in calculating Termination Gains and Termination Losses, and (c) brokerage fees, unwinding costs, commissions, and other similar costs and expenses incurred by the non-defaulting Party. “Termination Gains” means with respect to the non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Termination Costs), resulting from the termination of this Agreement for its remaining term, determined in a commercially reasonable manner.]

10.3.3. Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to limit any right or remedy available at law or in equity to the Parties, including the right to any and all damages for any breach or other failure to perform hereunder. All remedies in this Agreement shall survive termination or cancellation of this Agreement and are cumulative.

10.4 Termination Due to Applicable Laws.

10.4.1. PSE may terminate this Agreement if PSE, in its sole judgment, determines that such termination is required or necessary due to Applicable Laws (including an order issued by the WUTC). Any such termination shall be effected by delivery to Seller of written notice specifying the date upon which such termination becomes effective, such date to be on or after January 1st of the following calendar year.

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10.4.2. Upon Seller's receipt of a termination notice delivered in accordance with Section 10.4.1, Seller shall notify each Participating Customer of the Termination Date.

ARTICLE 11. CONTRACT ADMINISTRATION AND NOTICES

11.1 Notices in Writing.

Except as otherwise set forth in this Agreement, including Section 4.2, any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party shall be in writing and delivered to the address(es) for such other Party or by email to the Party Representative as set forth in Exhibit C (as may be updated from time to time by written of such other Party), and shall either be (a) personally delivered, (b) sent by U.S. first-class mail, postage prepaid, or (c) sent via a nationally recognized pre-paid overnight courier service. Any such notice, request, consent, or other communication, including any notice of the type described in Section 4.2, shall be deemed to be given only when actually received.

11.2 Authority of Representatives.

The Parties' representatives designated below (each, a "Party Representative") shall have authority to act for its respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes.

Seller Representative:



PSE Representative: Jeffrey Tripp;
jeff.tripp@pse.com

However, except as provided in Section 4.2.3, no Party Representative will have the authority to amend or modify any provision of this Agreement. Either Party may designate an alternate or substitute Party Representative by notice to the other Party hereto.

11.3 Contract Records and Audits.

11.3.1. Seller shall maintain complete and accurate: (a) records of and supporting documentation for all charges under this Agreement, (b) complete and accurate logs of all material operations, which will include all information on dispatch instructions provided to customers, customer response to dispatch direction, availability, maintenance performed, outages, electrical characteristics of Seller Equipment and Participating Customer Facilities, and similar information relating to the availability, testing and operation of the Program ("Operations Log"), (c) and other data and/or information created, generated, collected, processed or stored by Seller in its performance under this Agreement (all such records, documentation, data, and information, "Contract Records"). Unless PSE instructs Seller to delete or destroy any Contract Records or requests the return of such Contract Records to PSE, Seller shall retain Contract Records for a period of at least six (6) years after the date of the performance or after termination of this Agreement (the "Retention Period").

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11.3.2. Seller shall provide an electronic copy of, or access to downloadable copies of via a secure sharesite or similar means, Operational Logs electronically to PSE within three (3) business days of PSE's written request.

11.3.3. Seller shall provide to PSE and its representatives through the Retention Period, access at reasonable hours to Seller personnel and facilities and to Contract Records and other pertinent information, all to the extent relevant to Seller's performance under this Agreement. Seller has the right to use general audit software and other reporting tools against the data files or databases dedicated to the services provided under this Agreement and (A) will be provided direct access to data (if databases are merged and segmented logically) or (B) will review extract program or code with code run under supervision of PSE's auditor. Such access shall be provided for the purpose of performing audits and inspections to, among other things, (1) verify the accuracy and completeness of Contract Records, (2) verify the accuracy and completeness of charges under this Agreement, and (3) examine Seller's compliance with its obligations under this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Late Payment Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived; provided that in no event will PSE be required to make any payment with respect to an underpayment unless such underpayment is identified and verified prior to December 31 of the calendar year in which the underpayment occurred. Except as otherwise provided in this paragraph, each Party will be responsible for its own costs associated with any audit activity pursuant to this Section 11.3.3. If an audit reveals an overcharge of more than 10%, then Seller shall promptly reimburse PSE for the reasonable cost of the portion of such audit relating to the overcharge.

11.4 Governing Law; Dispute Resolution.

11.4.1. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington without regard its conflicts of laws provisions.

11.4.2. Consent to Jurisdiction.

(a) Each of the Parties hereto hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement shall be brought exclusively in any of the courts of the United States of America located in the United States District Court for the Western District of Washington, having subject matter jurisdiction, or if such court lacks subject matter jurisdiction, then the state district court for King County, Washington.

(b) By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby: (i) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect

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to such documents; (ii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum; (iii) agrees that service of process in any such action may be effected by mailing a copy thereof by certified mail, return receipt requested, postage prepaid, to such Party its address(es) set forth in Exhibit C, or at such other address of which the other Parties hereto shall have been notified; and (iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

11.4.3. Waiver of Trial by Jury. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

11.4.4. Disputes. In the event of any good faith dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a “Dispute”), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within thirty (30) days after such referral to the senior management of the Parties, then either Party may pursue all of its remedies available in law or equity. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner, provided, however, that failure to resolve a Dispute shall not, standing alone, constitute a breach of this Agreement. Notwithstanding the existence of a Dispute, each Party shall fulfill its obligations in accordance with the terms hereof.

[11.4.5. Specific Performance. The Parties agree that no adequate remedy at law exists for a breach or threatened breach of any of the provisions of this Agreement, the continuation of which unremedied will cause the aggrieved Party to suffer irreparable harm. Accordingly, the Parties agree that the Parties shall be entitled, in addition to other remedies that may be available to them, to immediate injunctive relief from any breach or threatened breach of any of the provisions of this Agreement and to specific performance of their rights hereunder, as well as to any other remedies available at law or in equity. This right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, the Parties would not have entered into this Agreement. The Parties agree that they will not oppose the granting of an injunction, specific performance and other

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equitable relief on the basis that the opposing Party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or in equity. The Parties shall not be required to provide any bond or other security in connection with any such order or injunction. The Parties also agree that (i) the seeking of any remedies pursuant to this Section 11.4.5 shall not in any way constitute a waiver of any right to seek any other form of relief that may be available under this Agreement.]

ARTICLE 12. REPRESENTATIONS AND WARRANTIES; COVENANTS

12.1 Seller's Representations and Warranties.

Seller hereby represents and warrants as follows:

- (a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (b) The person executing this Agreement on behalf of Seller has full power and authority to execute and deliver this Agreement;
- (c) The execution, delivery, and performance of its obligations under this Agreement have been duly authorized by all necessary corporate action, and do not:
 - (i) require any consent or approval of Seller's Board of Directors or stockholders or any governmental authority, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to PSE upon its request);
 - (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller (including, without limitation, the Federal Power Act or any rules, regulations, or orders issued thereunder) or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or
 - (iii) result in a material breach or constitute a material default under Seller's formation documents or bylaws, or under any material agreement to which Seller is a party or any indenture or loan or credit agreement, or any other material agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.
- (d) This Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except as may be limited by bankruptcy, insolvency, or similar laws of general application and by the effect of general principles of equity, regardless of whether considered at law or in equity);

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- (e) By registering a Participating Facility, at the time of such addition, and thereafter until such Participating Facility is removed from the program under Section 3.1:
 - (i) The Participating Facilities registered in the Demand Response Software will be Eligible Facilities; and
 - (ii) Seller and each Participating Customer registered in the Demand Response Software will have entered into a Participating Customer Contract that shall continue in full force and effect.
- (f) With each removal of a Participating Facility in the Demand Response Software, at the time of such removal, either (i) each Participating Customer of each Participating Facility removed will have elected to terminate its participation in the Program, or (ii) each Participating Customer Contract in respect of each Participating Facility removed will have been terminated.
- (g) There has been no materially adverse change in Seller's financial position or creditworthiness from the date of the then-latest available and provided financial statements.

12.2 PSE's Representations and Warranties.

PSE hereby represents and warrants as follows:

- (a) PSE is a regulated electric utility duly formed and validly existing under the laws of the State of Washington;
- (b) The person executing this Agreement on behalf of PSE has full power and authority to execute and deliver this Agreement;
- (c) This Agreement constitutes a valid and binding obligation of PSE, enforceable against PSE in accordance with its terms (except as may be limited by bankruptcy, insolvency, or similar laws of general application and by the effect of general principles of equity, regardless of whether considered at law or in equity); and
- (d) The execution, delivery, and performance of its obligations under this Agreement by PSE have been duly authorized by all necessary corporate action, and do not:
 - (i) require any consent or approval of PSE's Board of Directors or any governmental authority, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);
 - (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to PSE or violate any provision in any formation documents of

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PSE, the violation of which could have a material adverse effect on the ability of PSE to perform its obligations under this Agreement; or

- (iii) result in a material breach or constitute a material default under PSE's formation documents or bylaws, or under any material agreement to which PSE is a party or any indenture or loan or credit agreement, or any other material agreement, lease, or instrument to which PSE is a party or by which PSE or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of PSE to perform its obligations under this Agreement.

12.3 Seller's Covenants.

12.3.1. Seller covenants that Seller shall comply with all Applicable Laws, including all applicable consumer protection, marketing, solicitation, anti-corruption, anti-bribery, anti-money laundering, anti-terrorism and economic sanction and anti-boycott laws.

12.3.2. Seller shall notify PSE promptly, but in no event later than five (5) Business Days, after Seller or its representatives have actual knowledge of any adverse legal action or lawsuit, investigation, or concerted campaign against or involving the matters covered by this Agreement and the performance thereof or Seller that could reasonably be expected to negatively affect the reputation of PSE's distributed energy resource and demand response programs, Seller, or PSE in connection thereto (each, a "Reputational Event"). At the request of PSE, Seller shall communicate and cooperate with PSE on its response(s) to such a Reputational Event. Seller shall consider in good faith any reasonable comments provided by PSE in the course of developing documentation related to Seller's response to such Reputational Event.

ARTICLE 13. WORKERS' COMPENSATION AND INSURANCE

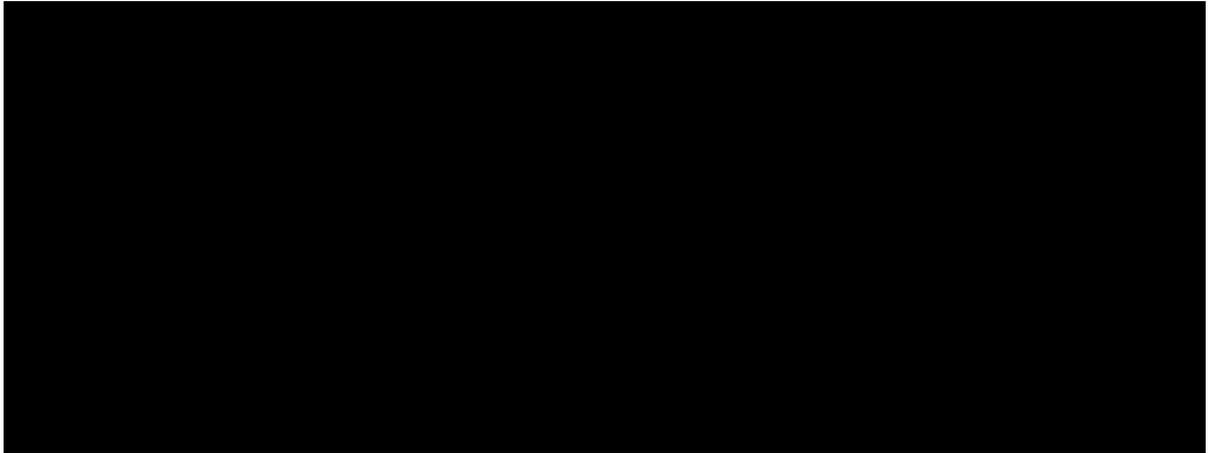
13.1 Insurance Requirements.

13.1.1. Workers Compensation and Employer's Liability. At all times during the Initial Term and for the periods after the Initial Term identified below, Seller will procure and maintain, at its sole cost and expense, insurance with provisions, coverages, and limits as specified below, and will require all Subcontractors to maintain such insurance as applicable to their performance in connection with the Agreement. Seller will maintain the insurance and coverages described herein in full force and effect at all times: (i) until all of Seller's obligations under the Agreement have been fully performed and all operations of Seller have been completed; and (ii) in the case of completed operations and product liability, professional liability, and any "claims made" umbrella or excess insurance, until the expiration of three (3) years after the end of the Term, through continued policy renewals or purchase of "tail coverage."

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13.1.4. Automobile Liability Insurance. Covering all owned, hired and non-owned vehicles to be used in the performance of the Services in an amount no less than \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage (including loss of use).

13.1.5. Professional Liability. Technology Errors & Omissions and Privacy Liability insurance, including coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products, and also including coverage for violation of software copyright. The policy will also insure: (1) loss, disclosure and theft of data in any form; (2) media and content rights infringement and liability, including software copyright infringement; and (3) network security failure, including but not limited to, denial of service attacks and transmission of malicious code. Technology services should cover liabilities, punitive damages, and claim expenses arising from acts, errors, and omissions, in rendering or failing to render all services and/or goods and in the provision of all deliverables in the performance of the Agreement. Coverage must include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services, and any other causally-related crisis management expense for up to one (1) year. Coverage will contain severability for the insured organization for any intentional act exclusions. This coverage will contain a retroactive date no later than the Effective Date of this Agreement with limits of not less than \$5,000,000 per claim and \$5,000,000 in the aggregate.

13.2 Delivery of Insurance Certificates.

Prior to performing any services or goods and within ten (10) days after execution of this Agreement, Seller shall furnish PSE with a certificate of insurance and copies of relevant endorsements demonstrating the insurance required in Section 13.1. Subject to Section 13.3(f), within thirty (30) days after any renewal, material modification, or any notice of termination, cancellation, or expiration of any policy of insurance required under the Agreement, Seller will deliver to PSE a certificate of insurance with respect to any

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replacement policy. If requested by PSE, Seller will provide PSE a copy of any policy of insurance required to be maintained under this Article 13, including all endorsements thereto.

13.3 Insurance Policy Requirements.

All policies of insurance required under this Agreement must:

- (a) be placed with an insurance carrier maintaining an AM Best rating of at least A- VII and licensed to do business under the laws of the State of Washington;
- (b) with the exception of workers' compensation, employer's liability, and professional liability insurance, be endorsed to name PSE, its subsidiaries and affiliates, and each of their respective shareholders, directors, officers, employees, representatives, and agents (the "Owner Parties") as additional insureds;
- (c) with the exception of workers' compensation, employer's liability, and professional liability insurance, state that the "Insured v. Insured" exclusion does not preclude coverage if an additional insured brings a claim against the named insured;
- (d) be primary insurance with respect to the interests of the Owner Parties; any insurance or self-insurance maintained by any of the Owner Parties will be excess and non-contributory insurance with respect to the insurance required herein;
- (e) include a provision providing a waiver of the insurer's right to subrogation against each of the Owner Parties. To the extent permitted by its policies of insurance, Seller hereby waives all rights of subrogation against each of the Owner Parties;
- (f) with the exception of workers' compensation, employer's liability, and professional liability insurance, apply severally and not collectively to each insured against whom any claim is made or suit is brought, except that the inclusion of more than one insured shall not operate to increase the insurance company's limits of liability as set forth in the insurance policy; and
- (g) provide that the policies will not be canceled or their limits reduced or restricted to a level below the requirements of this Section 8 without giving at least thirty (30) days' prior written notice to the Procurement Department of Puget Sound Energy, Inc., PO Box 97034, (BOT-01O) Bellevue, WA 98009-9734.

13.4 Seller Responsibility.

Seller will be solely responsible for any premium, deductible, self-insured retention, and similar self-insurance mechanism amounts contained in its insurance program and for any deficiencies in the amounts of insurance maintained. Seller will have no right to call upon or seek contribution from the Owner Parties for deductibles, self-insured retentions, similar self-insurance mechanisms, or insurance premiums associated with policies of insurance

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required in this Agreement. Any deductible, self-insured retention, or similar self-insurance mechanism greater than \$50,000 requires PSE's prior written approval.

13.5 Non-limitation.

The requirements of this Agreement as to insurance and acceptability to PSE of insurers and insurance to be maintained by Seller are not intended to and will not in any way limit or qualify any other obligation of Seller under the Agreement. Seller will be held accountable for all insurance coverage, including that of any subcontractors hired by seller. Insurance will be independent of the indemnity provisions of this Agreement, and insurance hereunder is not designed solely to guarantee payment of Seller's indemnity obligations. The limits of liability set out in this Section 13 may be increased or decreased by mutual consent of the Parties, which consent will not be unreasonably withheld by either Party, in the event of any factors or occurrences, including changes in work scope, substantial increases in the level of jury verdicts or judgements, or the passage of state, federal, or other governmental compensation plans, or Applicable Laws that would materially increase or decrease Seller's and/or PSE's exposure to risk.

13.6 OSHA Requirements.

Seller will comply with all Occupational Health and Safety Administration ("OSHA") recordkeeping and injury reporting requirements. Seller will report to PSE within 24 hours any OSHA recordable injuries that occur while performing work on behalf of PSE. A "recordable injury" includes any injury that results in treatment beyond first aid, restricted workdays, and/or lost workdays. Seller must provide the following details via email to safety@pse.com: Seller's formal legal name, date and location of incident, a short description of the incident, and whether the recordable injury includes one or more lost workdays (not including the date of injury).

ARTICLE 14. INDEMNITY

14.1 General Indemnity.

Seller hereby indemnifies, defends and holds harmless PSE, and its current and future parent company(ies), subsidiaries, affiliates and their respective shareholders, officers, directors, employees, successors and assigns (collectively, and including such other Party, the "Indemnified Parties"), from and against any and all claims, demands, actions, suits, proceedings, losses, liabilities, penalties, interest, fines, damages, costs or expenses, including reasonable attorneys' fees and witness fees of any type (collectively, "Claims and Losses"), to the extent resulting from or arising in connection with:

- (a) the fault, intentional act or omission, negligence or strict liability of Seller or any employee, officer, director, agent, representative, contractor, successor or assign of Seller in relation to this Agreement or the Program;
- (b) any material breach of the representations, warranties, covenants and obligations of Seller under this Agreement;

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- (c) any breach by Seller of any Participating Customer Contract;
- (d) any breach by Seller of the confidentiality provisions of this agreement or any unauthorized use of PSE Information;
- (e) the installation, maintenance, ownership, operation and removal of Seller Equipment;
- (f) Seller's use or operation of any Data Pulse Equipment installed pursuant to Section 7.2.1; or
- (g) any third party claims of any kind, whether based upon negligence, strict liability or otherwise (including claims arising out of any defect in the design or manufacture of any item of Seller's Equipment), to the extent arising out of or connected in any way to this Agreement or any Participating Customer Contract.

The foregoing indemnification obligation shall extend to indemnify, defend and hold harmless the Indemnified Parties where they are allegedly concurrently negligent with Seller, any subcontractor or supplier of Seller, or any of the directors, officers, partners, agents, servants or employees of Seller, or of its subcontractors or suppliers, in causing or contributing to the liability causing event, but shall not apply to the extent that such Claim or Loss is the fault of or is caused by the gross negligence or willful misconduct of the Indemnified Parties.

14.2 Indemnification Procedure.

14.2.1. Notification and Participation. Promptly after receipt by any Indemnified Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, PSE shall notify Seller in writing of such fact. The failure to give such notice, however, shall not affect the obligation to provide indemnification in accordance with the provisions of this Agreement unless, and only to the extent that, Seller is actually prejudiced by such failure. Seller shall be entitled to participate at its own expense in the defense or, if it so elects, to assume the defense thereof with counsel designated by Seller and reasonably satisfactory to the Indemnified Party. The Indemnified Party shall have the right to select and be represented by separate counsel, at its own reasonable expense.

14.2.2. Indemnification Costs. Seller shall bear all fees and expenses of the counsel retained by the Indemnified Party if (i) Seller elects not to assume, or expressly waives its right to assume, the defenses of such action, (ii) Seller, within thirty (30) days after the foregoing notice of the commencement of the action, has not employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party, or (iii) Seller has authorized the employment of counsel for the Indemnified Party at the expense of Seller. If Seller fails to assume the defense of a claim subject to indemnification, the Indemnified Party may at the expense of Seller contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of Seller (not to be unreasonably withheld).

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14.2.3. Survival. Section 14.1 and this Section 14.2 shall survive the expiration or termination of this Agreement with respect to any Claim or Loss for which notice is provided within 12 months from the date of termination or expiration of this Agreement.

14.3 Waiver of Consequential Damages; Acknowledgement of Liquidated Damages.

NEITHER PARTY NOR ITS SUBSIDIARIES OR AFFILIATES NOR THE OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARTICIPATING CUSTOMERS, PARTNERS, MEMBERS, SHAREHOLDERS, PRINCIPALS, DIRECTORS, TRUSTEES, SUCCESSORS OR ASSIGNS OF ANY OF THEM SHALL IN ANY EVENT BE LIABLE TO THE OTHER PARTY OR ITS SUBSIDIARIES OR AFFILIATES OR THE OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARTICIPATING CUSTOMERS, PARTNERS, MEMBERS, SHAREHOLDERS, PRINCIPALS, DIRECTORS OR TRUSTEES OF ANY OF THEM FOR PUNITIVE, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, WHETHER ARISING IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, BY OPERATION OF LAW OR OTHERWISE, CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. THE FOREGOING WAIVER OF CONSEQUENTIAL AND OTHER INDIRECT DAMAGES WILL NOT APPLY WITH RESPECT TO THIRD PARTY CLAIMS AND LOSSES FOR WHICH A PARTY IS OBLIGATED UNDER THIS AGREEMENT TO INDEMNIFY THE OTHER.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. SUCH LIQUIDATED DAMAGES WILL BE THE SOLE AND EXCLUSIVE MONETARY REMEDY OF THE PARTY ENTITLED TO SUCH DAMAGES IN ANY SUCH CIRCUMSTANCE.

EACH OF SELLER'S AND PSE'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREUNDER, [INCLUDING FOR THE AVOIDANCE OF DOUBT ANY TERMINATION PAYMENT UNDER SECTION 10.3], WHETHER ARISING IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, BY OPERATION OF LAW OR OTHERWISE, IS LIMITED TO [THE AGGREGATE VALUE OF THE CAPACITY PAYMENTS FROM THE MOST RECENT PROGRAM SEASON]. HOWEVER, THE FOREGOING LIMITATION ON DAMAGES WILL NOT APPLY TO: (A) SELLER'S OBLIGATIONS UNDER SECTIONS 8.2 AND 18.5 HEREOF; (B) CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SELLER OR PSE OR THEIR RESPECTIVE AGENTS, EMPLOYEES, OR SUBCONTRACTORS; OR (C) THIRD-PARTY CLAIMS AND

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LOSSES FOR WHICH A PARTY IS OBLIGATED UNDER THIS AGREEMENT TO INDEMNIFY THE OTHER.

ARTICLE 15. REGULATORY JURISDICTION AND COMPLIANCE

15.1 Governmental Jurisdiction and Regulatory Compliance.

Each Party shall at all times comply with all applicable laws, statutes, treaties, ordinances, codes, permits, authorizations, judgements, decrees, writs, injunctions, rules, orders, decisions, regulations, approved tariffs, and any other legal or regulatory determination or restriction, of any governmental or regulatory agency or authority (including the WUTC, North American Electric Reliability Corporation, and the Western Electricity Coordinating Council) or any binding interpretation or application of any of the foregoing, that is applicable to such Party and its activities under this Agreement (“Applicable Laws”) and shall give all notices, and shall procure and maintain all governmental permits, licenses, and inspections, as may be required by Applicable Laws or otherwise necessary for its performance of this Agreement.

15.2 Provision of Support.

Seller shall make available, upon PSE’s reasonable request and subject to reasonable reimbursement of costs, any personnel of Seller and any records relating to the Participating Facilities to the extent that PSE requires the same beyond what is already required by other provisions of this Agreement in order to fulfill any regulatory approval and reporting requirements, or to assist PSE in litigation, including administrative proceedings before any government or regulatory agency or authority.

ARTICLE 16. ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

16.1 No Assignment Without Consent.

Except as permitted below, neither Party shall assign its rights, interests or obligations in this Agreement or any portion hereof without the prior written consent of the non-assigning Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may, without the other Party’s consent, assign this Agreement and its rights, interests, and obligations hereunder to an entity that controls, is controlled by, or is under common control with the assigning Party and which meets the credit requirements of Article 17 below, provided that with respect to any proposed assignment by Seller, Seller shall deliver or cause to be delivered to PSE evidence reasonably satisfactory to PSE of the technical and financial capability of the proposed assignee to carry out Seller’s obligations under this Agreement. Any assignee of a Party shall expressly assume in writing the assigning Party’s obligations hereunder, unless otherwise agreed to in writing by the non-assigning Party. No assignment, whether or not consented to, shall relieve the assigning Party of its obligations hereunder in the event the assignee fails to perform, unless the non-assigning Party agrees in writing to waive such assigning Party’s continuing obligations under this Agreement. No assignment shall impair any Letter of Credit given by Seller hereunder; provided, however, that the Seller’s Letter

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of Credit shall be released once both the assignee assumes the obligations hereunder and provides replacement credit support that is satisfactory to PSE.

16.2 Transfer Without Consent Null and Void.

Any assignment by either Party of any interest in this Agreement made in contravention of the provisions of Section 16.1 above shall be null and void and shall constitute an Event of Default pursuant to Article 10.

ARTICLE 17. CREDIT REQUIREMENTS

17.1 Financial Information.

Seller shall deliver to PSE financial information as PSE may reasonably request from time to time in order for PSE to determine whether Seller is able to perform its obligations under this Agreement and the Program.

ARTICLE 18. MISCELLANEOUS

18.1 Waiver.

The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to exercise any of its rights under this Agreement, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

18.2 Taxes.

Seller shall be responsible for any and all present or future federal, state, municipal, or other taxes due as a result of compensation paid to Seller hereunder or applicable by reason of the operation of the Program.

18.3 Relationship of the Parties.

18.3.1. No Joint Venture.

This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any Agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

18.3.2. Employees.

Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and

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statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of PSE for any purpose; nor shall Seller represent to any person that he or she is or shall become a PSE employee.

18.4 Equal Employment Opportunity Compliance Certification.

Seller acknowledges that as a government contractor PSE is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller. To the extent applicable, RCW 82.08.962 and 82.12.962 and all equal opportunity and affirmative action clauses, including the Equal Opportunity Clause provided for in the Regulations issued pursuant to Executive Order 11246, the Affirmative Action Clause for Handicapped Workers provided for in the Regulations issued pursuant to the Rehabilitation Act of 1973, and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam era provided for in the regulations issued pursuant to the Vietnam Veterans Adjustment Act of 1974, are hereby incorporated herein to the extent required by Applicable Laws.

18.5 Confidentiality.

18.5.1. Definition of Confidential Information.

For purposes of this Agreement, the term "Confidential Information" means information, whether furnished by Seller, PSE or otherwise, concerning the business, operations, assets, customers and employees of PSE and Seller and their respective current or former parent companies, subsidiaries and/or affiliates, including the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection herewith, or any related subsequent agreement, designs, drawings, specifications, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information will include all PSE Information.

18.5.2. Nondisclosure.

Except as otherwise provided herein and except with the prior written consent of the disclosing Party, the receiving Party shall keep confidential and not disclose Confidential Information to any third party (other than affiliates, directors, officers, employees, and subcontractors of the receiving Party who have a bona fide need to know of such Confidential Information and who have agreed to comply with the obligations of this Section 18.5 ("Receiving Party Representatives")) and shall not disclose to any third party (other than Receiving Party Representatives) the fact that such Confidential Information has been made available to receiving Party. The receiving Party agrees to use, and shall cause Receiving Party Representatives to use, the higher of the same degree of care receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a

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reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. The receiving Party hereby agrees that it shall use, and shall cause Receiving Party Representatives to use, the Confidential Information solely for the purpose of performing under this Agreement and not in any way detrimental to the disclosing Party, and its respective parent company(ies), subsidiaries and/or affiliates. Neither the receiving Party nor Receiving Party Representatives shall use the Confidential Information for their own benefit other than as permitted under this Agreement. Each Party shall be responsible for any unauthorized disclosure of the other Party's Confidential Information by any of its Receiving Party Representatives.

18.5.3. Permitted Disclosure.

Notwithstanding the provisions of Section 18.5.2 above, receiving Party may disclose Confidential Information in the event, but only to the extent, that, based upon cooperation with the other Party and advice of counsel, receiving Party is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency, regulatory authority or stock exchange. Prior to making or permitting any such disclosure, receiving Party shall provide the disclosing Party with prompt written notice of any such requirement so that the disclosing Party (with Receiving Party's assistance if requested by the disclosing Party) may seek a protective order or other appropriate remedy. Seller understands that, as a regulated public utility in the State of Washington, PSE may be subject to certain disclosure requirements that may not permit PSE to provide prior notice of required disclosures, but that PSE will provide notice as soon as practicable after any such required disclosure. Seller further understands that any Confidential Information provided to a governmental agency or regulatory authority by PSE is subject to the Public Records Act (RCW Chapter 42.56) and that PSE will have no liability to Seller of any public disclosure of Confidential Information by any governmental agency or regulatory authority.

18.5.4. Retention.

At any time upon the written request of the disclosing Party, receiving Party shall promptly return to the disclosing Party or destroy if so directed by the disclosing Party (with such destruction to be certified to the disclosing Party) (i) all Confidential Information (and all copies, backups and abstracts thereof, however stored) furnished to receiving Party or Receiving Party Representatives, (ii) all documents furnished to or prepared by receiving Party or Receiving Party Representatives that contain Confidential Information (and all copies, backups and abstracts thereof, however stored), and (iii) all other documents in receiving Party's or Receiving Party Representatives' possession that contain or that are based on or derived from Confidential Information (and all copies, backups and abstracts thereof, however stored). Notwithstanding the foregoing, the receiving Party may elect to destroy rather than deliver any Confidential Information furnished to it if the Confidential Information is imbedded within documents or records prepared by

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the receiving Party (with such destruction to be certified to the disclosing Party). Furthermore, the receiving Party may retain copies of any Confidential Information (including Confidential Information stored on electronic, magnetic or similar media) in accordance with policies and procedures implemented in order to comply with legal and regulatory recordkeeping requirements. The receiving Party will keep such retained copies confidential as provided herein and will use them solely for the purpose of recordkeeping compliance.

18.5.5. Survival.

Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is 5 years after the termination or expiration of this Agreement, except that, with respect to Confidential Information comprising information relating to PSE's customers (including Participating Customers), including names, telephone numbers, addresses, billing information, electronic mail addresses and electric energy usage information and other PSE Information, such confidentiality provisions shall remain in full force in effect with respect to such Confidential Information in perpetuity.

18.5.6. Remedies.

The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of receiving Party are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Section 18.5 by Seller, PSE, or their respective parent company(ies), subsidiaries and/or affiliates, who shall be third party beneficiaries of this Agreement, the non-breaching Party shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond or first complying with the procedures set forth in Section 11.5(a). Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to PSE, Seller, and their direct and indirect parent company(ies), subsidiaries or affiliates.

18.6 Survival of Obligations.

Cancellation, expiration, or early termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including, but not limited to, warranties, remedies, or indemnities generally, Article 9 (Billing and Payment), Article 14 (Indemnity), Section 11.4 (Governing Law; Dispute Resolution), Section 18.2 (Taxes), Section 18.5 (Confidentiality), and Section 18.7 (Severability), which shall survive for the period of the applicable statute(s) of limitation. The applicable provisions referenced above shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties

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arising prior to termination and, as applicable, to provide for final payments and adjustments related to the period prior to termination, payment of any money due and owing to either Party pursuant to this Agreement and the indemnifications specified in this Agreement.

18.7 Severability.

In the event any of the terms, covenants, or conditions of this Agreement, or the application of any such terms, covenants, or conditions, are held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in full force and effect.

18.8 Complete Agreement; Amendments.

The terms and provisions contained in this Agreement constitute the entire agreement between PSE and Seller with respect to the matters set forth in this Agreement and shall supersede all previous communications, representations, or agreements, either verbal or written, between PSE and Seller with respect to such matters. This Agreement may be amended, changed, modified, or altered by the Parties only by an amendment in writing and signed by the authorized representatives of both Parties. All Appendices and Exhibits attached to or delivered in connection with this Agreement are integral parts of this Agreement as if fully set forth herein.

18.9 Binding Effect.

This Agreement, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties' respective successors-in-interest, legal representatives, and permitted assigns.

18.10 Headings.

Captions and headings used in the Agreement are for ease of reference only and do not constitute a part of this Agreement.

18.11 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other similar transmission method, and any counterpart so delivered shall be deemed to have been duly and validly executed and delivered and be valid and effective for all purposes.

18.12 Telephone Recording.

Each Party acknowledges and agrees to the taping or electronic recording of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the recordings constitute Confidential Information and will be

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retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement. Each Party waives any further notice of that monitoring or recording, and agrees to notify its personnel of the monitoring or recording and to obtain any necessary consent of those personnel.

18.13 Effect of Force Majeure Event.

Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement due solely to a Force Majeure Event, provided that:

- (a) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure Event;
- (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event;
- (c) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure Event; and
- (d) when the non-performing Party is able to resume performance of its obligations under this Agreement, the non-performing Party shall give the other Party written notice to that effect.

If the Force Majeure Event has not been cured within [90] days of its commencement, the Party not claiming the Force Majeure Event may, at any time following the end of such [90-day] period, terminate this Agreement upon written notice to the nonperforming Party, without further obligation by the terminating Party except as to costs and balances incurred prior to the effective date of the termination. The Party not claiming the Force Majeure Event may, but shall not be obligated to, extend such [90-day] period, for such additional time as it, in its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions leading to the Force Majeure Event. Notwithstanding the foregoing, upon 30 days' prior written notice to the other Party, the Party not claiming the Force Majeure Event may terminate this Agreement without liability or obligation of either Party to the other (except for such payment obligations that arose prior to the effective date of such termination) if: (a) any single Force Majeure Event lasts more than [180] consecutive days or (b) the cumulative duration of all Force Majeure Events exceeds more than [180] days during the Initial Term.

18.14 Policies and Reporting Obligations.

18.14.1. Seller will at all times during the Initial Term comply with the terms of PSE's Responsible Supplier and Contractor Guidelines ("Contractor Guidelines"), which is available at <https://www.pse.com/pages/contractors-and-suppliers/responsible-supplier-and-contractor-guidelines> as well as other supplier policy, guideline or other documentation PSE institutes from time to time, each of which is incorporated herein and made a part of the Agreement as if fully set forth herein.

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18.14.2. Seller will not, and will ensure that its Subcontractors will not, directly or indirectly, offer, promise, authorize or give anything of value to a government official, a political party, a candidate for political office or any other person connected to a government in any way, or authorize the giving of anything of value to a government official, a candidate for political office, or any other person connected to a government in any way, for the purposes of: (a) influencing an act or decision of that government official (including a decision not to act) in connection with PSE's business or in connection with Seller's business with PSE; or (b) inducing such a person to use his or her influence to affect any government act or decision in connection with PSE's business or in connection with Seller's business with PSE. Supplier further warrants that neither it nor any of its subcontractors have offered or given, or will offer or give, any gifts or gratuities to PSE employees, agents, or representatives for the purpose of securing the Agreement or securing favorable treatment under the Agreement. In addition, Seller will notify PSE immediately if any of its employees, officers, or principals are officials or representatives of any government or are candidates for such government positions. Any breach of this provision by Seller or any of its subcontractors will constitute a material breach of the Agreement and will immediately entitle PSE to terminate this Agreement without liability to PSE.

18.14.3. PSE has entered into the Agreement with Seller based upon PSE's reasonable belief that Seller adheres to the strictest of ethical standards. In connection therewith, Supplier has reviewed PSE's Corporate Ethics and Compliance Code at <http://www.pse.com/aboutpse/CorporateInfo/Pages/Our-Ethics.aspx>.

18.14.5. Certain Reporting Requirements.

- (a) Seller shall furnish no later than May 1 of each Program Year and upon PSE's reasonable request (but in any event not more than twice annually), a report documenting how its performance of the Program is in accordance with the Customer Benefits Plan. "Customer Benefits Plan" must include, but not be limited to:
- How Seller is working with PSE to ensure at least 30% of the net energy benefit to customers is applied to named communities and vulnerable populations. PSE will work with Seller to identify specific Seller-provided metrics related to this requirement.
 - Overview of annual activity
 - Improvements to program made over Program Year
 - Opportunities for improvements of Program performance and suggestions on action items to execute performance.
 - Overall customer recruitment rate per Program
 - Overall MW capacity curtailment per season and program as applicable

PSE shall have the right to review and provide feedback (if any) on the report. This report must include at a minimum activities undertaken to support development of Program-related opportunities, including opportunities for

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women-, minority-, disabled-, and veteran-owned businesses; activities associated with facilitating a clean energy workforce, including job training, career awareness, and educational opportunities; charitable donations; and any other non-energy benefits. The report must also describe and document how Seller has implemented commitments made in the Customer Benefit Plan and explain any material variation from those commitments. Such report shall also include the prior years' information.

- (b) The report required under Section 18.14.6(a) also must include, at a minimum, the reporting of metrics associated with the customer benefit indicator "increase in quality and quantity of clean energy jobs" in PSE's 2021 Clean Energy Implementation Plan ("CEIP"). The metrics provided must include, at a minimum, the number of jobs created by the project; the number of local workers; the number of part-time and full-time jobs; the range of wages paid to workers; the extent to which additional benefits are offered; the use of apprenticeship labor; the demographics of workers, and any other relevant metrics or information that relates to the quality or quantity of jobs associated with the project. Indicators and metrics may change based on final approval of PSE's 2021 CEIP and subsequent CEIPs, at which time Purchaser will inform Seller, and Seller shall reasonably cooperate to revise indicators and metrics as necessary.
- (c) In its reporting and updates described above, Seller will use its best efforts to present metrics, benefits and burdens that specifically apply to Highly Impacted Communities and Vulnerable Populations as they are defined in WAC 480-100-605 and according to the criteria in PSE's CEIP. Seller will keep Purchaser informed as these criteria are finalized and further refined, and Purchaser will provide feedback and guidance to Seller on the methodology Seller uses for tracking those metrics, benefits and burdens. For projects located outside of Washington State, Seller will use its best efforts to present metrics, benefits and burdens based on disadvantaged communities 8.141 defined and identified in the Climate and Economic Justice Screening Tool (CEJST) created by the Council on Environmental Quality as directed by Executive Order 14008 on Tackling the Climate Crises at Home and Abroad.

18.15 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 18.16.

18.16 Good Faith. The Parties shall act in accordance with principles of good faith and fair dealing in the performance of this Agreement.

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[Remainder of page intentionally left blank; signature page follows]

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IN WITNESS WHEREOF, the authorized representatives of PSE and Seller have executed this Agreement as of the Execution Date.

PSE:

DocuSigned by:
By: 
EB3FAD07D1194DE...
Name: Kara Braun

Title: Sr Procurement Operations Analyst
07/17/2023

SELLER:

DocuSigned by:
By: 
C2E455EB37094ED...
Name: Ruben Llanes

Title: CEO
07/17/2023

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APPENDIX 1

Qualification, Measurement, and Verification Requirements

1. Baseline Performance Level

- a. For each Participating Facility, the “Unadjusted Baseline” for each Interval shall be the average of the Participating Facility’s measured electric energy usage, in MW, during the same Interval in each of the Baseline Measurement Days.
- b. For each day of a Program Event, the “Baseline Measurement Days” are [the four days within the immediately preceding 5 resource-specific Program Days in which no Program Event occurred, in which the Participating Facility had the highest average MW usage (highest electric energy usage in MW per hour) during the Program Hours].
- c. For each Interval, the Unadjusted Baseline will be adjusted by an amount equal to the average difference between the Unadjusted Baseline and the Participating Facility’s actual energy usage during the [1-hour period starting two hours before the start of the event] (the “Day-of Load Adjustment”). The Unadjusted Baseline, as adjusted by the Day-of Load Adjustment, is referred to herein as the “Facility Baseline Usage.” If the Facility Baseline Usage for any Interval is less than zero, then the Facility Baseline Usage for such Interval shall be deemed to be zero.
- d. On or before the second anniversary of the Service Commencement Date, or in-between Program Seasons Seller and PSE shall review the above-designated Facility Baseline Usage to determine whether an alternative methodology, mutually agreed to by Seller and PSE, should be implemented in order to improve (i) the accuracy of Project Performance Standards, (ii) the performance of the Program, or (iii) overall Participating Customer satisfaction. Neither Party will be obligated to agree to any change in the foregoing methodology that would materially adversely affect such Party.
- e. As an example of the Day-of Load Adjustment, assuming notification of a Program Event was received by Seller at 9:47 a.m. and notifications were issued to Participating Customers at 11:00 a.m. for a Program Event that begins at an Interval starting at 2:30 p.m. and ending at the Interval ending 5:30 p.m. for a Dispatch Period of 3 hours, an Unadjusted Baseline of 0.400 MW, 0.440 MW, 0.440 MW and 0.400 MW for the four Intervals starting at 12:30 p.m. and ending at 1:30 p.m., and assuming further, on such Program Event day, the actual metered electric energy usage for this same Participating Facility is 0.460 MW, 0.480 MW, 0.480 MW and 0.460

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MW during the four Intervals starting at 1:30 p.m. and ending at 2:30 p.m. In this case, the Day-of Load Adjustment would be equal to the average difference between such Participating Facility's Unadjusted Baseline and actual metered electric energy usage, or $[(0.460 - 0.400) + (0.480 - 0.440) + (0.480 - 0.440) + (0.460 - 0.400)] / 4 = 0.050$ MW. In this example, the Unadjusted Baseline for each Interval during the Program Event hours, 2:30 p.m. through 5:30 p.m., would be adjusted upward by 0.050 MW.

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APPENDIX 2

Committed Load Reduction Requirements and Procedures

A. Annual Load Reduction Targets

For each Program Period in each Program Year, Seller will use best efforts to provide PSE with the [volume] of Committed Load Reduction set forth in the following table for dispatch (“Annual Load Reduction Targets”):

Program Period (Initial Term)	Target Load Reduction (peak MW for any single interval)	
	Summer (May 1- September 30)	Winter (November 1 - March 31)
2023		5.7
2024	36.4	21.6
2025	69.2	46.2
2026	97.0	66.7
2027	97.0	66.7
2028	97.0	66.7

B. Monthly Load Reduction Targets

No later than 30 days prior to each Capacity Delivery Month during a Program Period, Seller will notify PSE in writing of the Committed Load Reduction that Seller expects to make available to PSE for dispatch during each Interval of such Capacity Delivery Month (“Monthly Load Reduction Target”). If the maximum single interval Monthly Load Reduction Target is greater than [10%] below or above the applicable Annual Load Reduction Targets set forth in Section A of this Appendix 2, Seller will specify the reason(s) why in such notice and the steps that Seller is undertaking or will undertake to address such deviation.

C. Committed Load Reduction

Every day of the Program Period (or in the case of the first day of each Program Period, the day before), Seller will notify PSE of the Committed Load Reduction for every Interval of the following three Program Days. For example, on June 16, Seller will nominate Committed Load Reduction for June 17th, 18th, and 19th. Upon notification of the Committed Load Reduction, all prior projected Committed Load Reductions are void. Upon dispatch of any program event, the remainder of the daily Committed Load Reduction is void and a new Committed Load Reduction will be issued. All Committed Load Reductions will assume an event length of the Committed Load Reduction Assumed Duration and a day-ahead event notice period.

E. Monthly Capacity Load Reduction Target Adjustments

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For additional Participating Load that becomes available or any Participating Load that becomes unavailable, either during a Capacity Delivery Month or less than 30 days before such Capacity Delivery Month (*i.e.*, after Seller gives notice under Section B of this Appendix 2), the Monthly Load Reduction Targets for such Capacity Delivery Month may, at Seller’s election and upon written notice to PSE, be adjusted for all remaining intervals of that month. As an example, if the Monthly Load Reduction Target for all Intervals of the applicable Capacity Delivery Month is 20 MW and on the 10th day of a Capacity Delivery Month during such Program Period, Seller makes available an additional 6 MW of Participating Load, then the Monthly Load Reduction Targets for the remaining Intervals of the month will be adjusted upward to 26 MW.

F. Resource Mix Targets

Seller may make available a mix of BDR Resources, C&I Resources, BESS Resources, Thermostat Resources, EV and EVSE Resources, and various other resources subject to PSE approval to meet the Capacity Load Reduction requirements at levels Seller determines on a reasonable basis are necessary to meet its obligations under this Agreement, provided that Seller will make commercially reasonable efforts to contract with and maintain the following minimum percentages of capacity from different resource categories during the applicable Program Year:

Program Period	BDR	Thermostat	BESS¹	C&I	EVC
Nov 2023 – Sep 2024	5%	10%	1%	5%	0%
Nov 2024 – Sep 2025	5%	10%	5%	10%	5%
Nov 2025 – Sep 2026	5%	10%	10%	20%	10%
Nov 2026 – Sep 2027	5%	10%	10%	20%	10%
Nov 2027 – Sep 2028	5%	10%	10%	20%	10%
Nov 2028 – Mar 2029	5%	10%	10%	20%	10%

The Parties agree to work in good faith to amend this Agreement to add new resource categories provided that any such new resource category will enhance the operational functionality and capability of this Program in a manner that is programmatically, commercially, technically, and financially viable for both Parties. For the avoidance of doubt, any such addition or modification requires mutual agreement of the Parties and shall occur in writing pursuant to Section 18.8.

¹ Assumes that batteries will be able to export to the grid after offsetting site load

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APPENDIX 3

Resource-Specific Performance Requirements

I. BDR Resources

A. Dispatch Protocol and Constraints

The following protocols will be followed with respect to the inclusion of BDR Resources as Participating Load that will be a part of the Committed Load Reduction and available for dispatch for Peaking Capacity Program Events and Testing Program Events:

Program Seasons	Winter: November 1 – March-31	Summer: May 1 – September 30
Time Of Day	7am-10am, 5pm-10pm	2pm-10pm
Dispatch Notification Methods	Email, phone, SMS, FlexSaver notification page	
Days of the Week	5 (Monday - Friday)	
Default Notice Period	24-hour notice	
Minimum Notice Period	4-hour notice	
Default Notice Period - Emergency	1-hour notice (best effort participation)	
Minimum Notice Period - Emergency	10 min (best effort participation)	
Duration per Event	1-4 hours	
Max Dispatches per Day	1	
Max Dispatches	15 per season	

B. Performance Metrics

Seller will measure and record the following performance metrics for BDR Resources:

1. Number and percentage of enrolled Participating Facilities successfully dispatched per event
2. Load shed per event
3. Weekly enrollment and disenrollment reporting

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4. BDR User metrics: rate of participation and individual event curtailment and post-season curtailment reporting

C. Capacity Targets

Seller will meet the minimum targets for Committed Load Reduction and Participating Load for BDR Resources set forth in Appendix 2.

D. Community Benefits and Equity Targets

Seller will use best efforts to meet the following targets for BDR Resources:

1. Count of: (i) customers located in highly impacted communities and vulnerable populations, and (ii) low-income customers, with each count goal to be determined by PSE exercising reasonable judgement and in accordance with Applicable Laws (including any applicable WUTC order) and provided to Seller in writing.
2. Average energy savings per home for categories (i) and (ii), each savings goal to be determined by PSE exercising reasonable judgement and in accordance with Applicable Laws (including any applicable WUTC order) and provided to Seller in writing.

PSE will identify or will create the clear criteria for Seller to identify, the customers into such groups. Seller acknowledges and understands that the count and savings goals are under development by PSE. If Seller believes in good faith that any goal identified by PSE in accordance with this Section III.D. is commercially unreasonable, the Parties will meet and discuss upon reasonable notice whether that goal can be revised or adjusted to address Seller’s good faith concerns.

II. Thermostat Resources

A. Dispatch Protocol and Constraints

The following protocols will be followed with respect to the inclusion of Thermostat Resources as Participating Load that will be a part of the Committed Load Reduction and available for dispatch for Peaking Capacity Program Events and Testing Program Events. These parameters are subject to revision by the Parties following review of Thermostat OEM parameters:

Program Seasons	Winter: November 1 – March 31	Summer: May 1 – September 30
Time Of Day	7am-10am, 5pm-10pm	2pm-10pm

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Dispatch Notification Methods	FlexSaver portal and OEM-based notification channels; in cases where OEM does not notify SMS and email and voicemail
Days of the Week	5 (Monday - Friday)
Default Notice Period - Day Ahead	24-hour notice
Minimum Notice Period - Day Ahead	1-hour notice (with pre-conditioning)
Default Notice Period - Emergency	1-hour notice (with pre-conditioning)
Minimum Notice Period - Emergency	10 min notice (with no pre-conditioning)
Duration per Event	1-4 hours
Max Dispatches per Day	1
Max Dispatch Durations	4,800 minutes per season

B. Performance Metrics

Seller will measure and record the following performance metrics for Thermostat Resources:

1. Number and percentage of enrolled Participating Facilities successfully dispatched per event
2. Weekly enrollment and disenrollment reporting
3. MW reduced during event window
4. MW reduced during event window by zip code
5. Number of opt-outs per event (only opt-outs via SMS or email notifications, not by device or app override)
6. Number of opt-outs per zip code (only opt-outs via SMS or email notification, not by device or app override)
7. Percentage of events in a season participated in per-customer
8. Overall incentives earned per customer, per program
9. Load shed per meter per event, per customer
10. Load shed per meter per customer, per season

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11. Seasonal attrition rate
12. Customer opt-outs through Seller-provided notifications (if available)

C. Capacity Targets

Seller will meet the minimum targets for Committed Load Reduction and Participating Load for Thermostat Resources set forth in Appendix 2.

D. Community Benefits and Equity Targets

Seller will use best efforts to meet the following targets for Thermostat Resources:

1. Count of: (i) customers located in highly impacted communities and vulnerable populations, and (ii) low-income customers, with each count goal to be determined by PSE exercising reasonable judgement and in accordance with Applicable Laws (including any applicable WUTC order) and provided to Seller in writing.
2. Average energy savings per home for categories (i) and (ii), each savings goal to be determined by PSE exercising reasonable judgement and in accordance with Applicable Laws (including any applicable WUTC order) and provided to Seller in writing.

PSE will identify or will create the clear criteria for Seller to identify, the consumers into such groups. Seller acknowledges and understands that the count and savings goals are under development by PSE. If Seller believes in good faith that any goal identified by PSE in accordance with this Section III.D. is commercially unreasonable, the Parties will meet and discuss upon reasonable notice whether that goal can be revised or adjusted to address Seller's good faith concerns.

III. BESS Resources

A. Dispatch Protocol and Constraints

The following protocols will be followed with respect to the inclusion of BESS Resources as Participating Load that will be a part of the Committed Load Reduction and available for dispatch for Peaking Capacity Program Events and Testing Program Events:

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Program Seasons	Winter: November 1 – March 30	Summer: May 1 – September 30
Time Of Day	7am-10pm	
Dispatch Notification Methods	To be defined in the Scope of Work and dependent on OEM and AutoGrid capabilities	
Days of the Week	7 (Monday – Sunday, including holidays)	
Default Notice Period - Day Ahead	To be defined in the Scope of Work and dependent on OEM and AutoGrid capabilities	
Minimum Notice Period	To be defined in the Scope of Work and dependent on OEM and AutoGrid capabilities	
Default Notice Period - Emergency	To be defined in the Scope of Work and dependent on OEM and AutoGrid capabilities	
Minimum Notice Period - Emergency	To be defined in the Scope of Work and dependent on OEM and AutoGrid capabilities	
Duration per Event	1-4 hours	
Max Dispatches per Day	1	
Max Dispatches	30 per season	

B. Performance Metrics

Seller will measure and record the following performance metrics for BESS Resources:

1. Number and percentage of enrolled Participating Facilities successfully dispatched per event
2. Weekly enrollment and disenrollment reporting
3. MW reduced during event window
4. MW reduced during event window by zip code
5. Number of customer opt-outs through Seller notifications (if available)
6. Percentage of events participated in per-customer
7. Overall incentives earned per customer, per program
8. Load shed per meter per event, per customer

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- 9. Load shed per meter per customer, per season
- 10. Annual attrition rate

C. Capacity Targets

Seller will meet the targets for Committed Load Reduction and Participating Load for BESS Resources set forth in Appendix 2.

D. Community Benefits and Equity Targets

Seller will use best efforts to meet the following targets for BESS Resources:

- 1. Count of: (i) customers located in highly impacted communities and vulnerable populations, and (ii) low-income customers, with each count goal to be determined by PSE exercising reasonable judgement and in accordance with Applicable Laws (including any applicable WUTC order) and provided to Seller in writing.
- 2. Average BESS energy discharged per home for categories (i) and (ii), each goal to be determined by PSE exercising reasonable judgement and in accordance with Applicable Laws (including any applicable WUTC order) and provided to Seller in writing.

PSE will identify or will create the clear criteria for Seller to identify, the consumers into such groups. Seller acknowledges and understands that the count and savings goals are under development by PSE. If Seller believes in good faith that any goal identified by PSE in accordance with this Section III.D. is commercially unreasonable, the Parties will meet and discuss upon reasonable notice whether that goal can be revised or adjusted to address Seller’s good faith concerns.

IV. EVSE and EV Resources

A. Dispatch Protocol and Constraints

The following protocols will be followed with respect to the inclusion of EVSE and EV Resources as Participating Load that will be a part of the Committed Load Reduction and available for dispatch for Peaking Capacity Program Events and Testing Program Events:

Program Seasons	Winter: November 1- March 31	Summer: May 1- September 30
Time Of Day	7am-10am, 5pm-10pm	2pm-10pm

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Dispatch Notification Methods	Email, SMS, phone call, FlexSaver, and when supported, OEM-based notification channels
Days of the Week	5 (Monday - Friday)
Default Notice Period - Day Ahead	24 hour notice
Minimum Notice Period	4-hour notice (with pre-charging)
Default Notice Period - Emergency	1 hour notice
Minimum Notice Period - Emergency	10 min (no pre-charging)
Duration per Event	1-4 hours
Max Dispatches per Day	1
Max Dispatches	15 per season

B. Performance Metrics

Seller will measure and record the following performance metrics for EVSE and EV Resources:

1. Number and percentage of enrolled Participating Facilities successfully dispatched per event
2. Weekly enrollment and disenrollment reporting
3. MW reduced during event window
4. MW reduced during event window by zip code
5. Number of opt-outs per event (only opt-outs via SMS or email notification, not by device or app override)
6. Number of opt-outs per customer
7. Number of opt-outs per customer, per event, by zip code
8. Percentage of events participated in per-customer
9. Overall incentives earned per customer, per program
10. Load shed per site per event
11. Load shed per site per season

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- 12. Annual attrition rate
- 13. Enrolled EVs by vehicle type
- 14. Number of opt-outs by Seller-provided notifications (if available)

C. Capacity Targets

Seller will meet the targets for Committed Load Reduction and Participating Load for EVSE Resources set forth in Appendix 2.

D. Community Benefits and Equity Targets

- 1. Count of: (i) customers located in highly impacted communities and vulnerable populations, and (ii) low-income customers, with each count goal to be determined by PSE exercising reasonable judgement and in accordance with Applicable Laws (including any applicable WUTC order) and provided to Seller in writing.
- 2. Average energy savings per home for categories (i) and (ii), each savings goal to be determined by PSE exercising reasonable judgement and in accordance with Applicable Laws (including any applicable WUTC order) and provided to Seller in writing.

PSE will identify or will create the clear criteria for Seller to identify, the consumers into such groups. Seller acknowledges and understands that the count and savings goals are under development by PSE. If Seller believes in good faith that any goal identified by PSE in accordance with this Section III.D. is commercially unreasonable, the Parties will meet and discuss upon reasonable notice whether that goal can be revised or adjusted to address Seller’s good faith concerns.

V. C&I Resources

A. Dispatch Protocol and Constraints

The following protocols will be followed with respect to the inclusion of C&I Resources as Participating Load that will be a part of the Committed Load Reduction and available for dispatch for Peaking Capacity Program Events and Testing Program Events:

Program Seasons	Winter: November 1- March 30	Summer: May 1 – September 30
Time Of Day	7am-10am, 5pm-10pm	2pm-10pm

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Dispatch Notification Methods	Email, phone, SMS
Days of the Week	5 (Monday - Friday)
Default Notice Period - Day Ahead	21 hour notice
Minimum Notice Period	4-hour notice
Default Notice Period - Emergency	1-hour notice (best effort participation)
Minimum Notice Period - Emergency	1-hour notice (best effort participation)
Duration per Event	1-4 hours
Max Dispatches per Day	1
Max Dispatches	10 per season

B. Performance Metrics

Seller will measure and record the following performance metrics for C&I Resources:

1. Number and percentage of successful dispatches of individual Participating Facilities per event
2. Biweekly enrollment and disenrollment reporting
3. MW reduced during event window
4. MW reduced during event window by zip code
5. Percentage of events in a season participated in per-customer
6. Overall incentives earned per customer
7. Load shed per meter, per event, per customer
8. Load shed per meter per customer, per season
9. Quantity and percentage of successful dispatches of Participating Load

C. Capacity Targets

Seller will meet the minimum targets for Committed Load Reduction and Participating Load for C&I Resources set forth in Appendix 2.

D. Community Benefits and Equity Targets

Seller acknowledges and understands that the count and savings goals are under development by PSE. If Seller believes in good faith that any goal identified by PSE in accordance with this Section III.D. is commercially unreasonable, the Parties will meet and discuss upon reasonable notice whether that goal can be revised or adjusted to address Seller's good faith concerns.

EXHIBIT A — MARKETING, RECRUITMENT AND RETENTION

1.0 Scope of Work. Seller will perform all marketing, recruitment and retention activities required to solicit Eligible Facilities and retain Participating Facilities for the Program. Activities include the development of a jointly developed marketing plan (a “Marketing Plan”), enrollment and education materials and periodic communications to minimize abandonment of Participating Facilities. In addition to PSE’s right to review and approve Marketing Materials under Section 6.1, PSE will be provided reasonable opportunity to review all Program marketing and recruitment activities. A minimum of 1 joint marketing strategy evaluation session is required.

The table below outlines the main roles and responsibilities of each Party as it relates to the marketing efforts for the Program.

Marketing Tasks for Seller Dispatchable Commercial and Industrial (C&I) Demand Response Program		Responsible	Consulted
Overall Program Marketing/Comms Plan		Seller	PSE
PSE Web Site	Draft content	Seller	PSE
	Layout	PSE	
	Hosting & maintenance	PSE	
Print and Digital Materials	Draft content	Seller	PSE
	Layout	PSE	
	Printing	PSE	
Outreach and Events (not including customer meetings or ordinary business)	Identification	Seller and PSE	
	Scheduling	Seller and PSE	
	Facilitator	PSE	

2.0 Marketing Plan. Seller shall be primarily responsible for developing the Marketing Plan. Seller shall incorporate PSE’s comments into developing the Marketing Plan. PSE will have final approval of the Marketing Plan, which approval shall not be unreasonably withheld, conditioned or delayed. The Marketing Plan will include:

- 2.1 Identifying and quantifying the target market and market segments
- 2.2 Developing a communications plan to reach the target market and market segments, including support for vulnerable populations and highly impacted communities in addition to the recruitment of non-vulnerable and highly impacted community customers;
- 2.3 Developing the concept for marketing collateral;

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- 2.4 Objectives and strategy;
- 2.5 Outline of tactics;
- 2.6 Timeline for implementation;
- 2.7 Outline of messages; and
- 2.8 Estimated budget for marketing collateral development and execution.

3.0 Party Responsibilities:

3.1 Staffing. Seller shall assign dedicated Program management staff to design, develop and distribute all enrollment materials including enrollment operations; education packages and other activities. Program management staff shall provide the following support activities:

- Coordination and planning;
- Prepare weekly and ad-hoc as needed status reports;
- Attend weekly and ad-hoc as needed implementation meetings, by phone or on-site; and
- Attend meetings when requested by PSE.

3.2 Marketing Designs. Seller, respective OEMs, and PSE will design branded Program content in accordance with PSE standards and policies and subject to PSE approval (which shall not be unreasonably withheld, except with respect to Marketing Materials under Section 6.1) prior to any distribution, publication or dissemination of such material to the public or any third parties. The detailed activities for this by each Party shall include:

Seller activities:

- Develop “Request for follow-up” leave-behind materials;
- Develop letter and fact sheet text;
- Develop layout for customer education package;
- Develop training and marketing materials for trade allies and installers;
- Deliver collateral and materials to customers;
- Develop phone script and “Frequently Asked Questions” for customer contact personnel; and
- Distribute final materials to Seller and PSE representatives.

PSE activities:

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- Develop and approve final layout
 - Print collateral materials
 - For marketing material that requires PSE approval, PSE will review and provide approval or feedback (as appropriate) on marketing content within 10 business days of AutoGrid's initial submission of such content.
- 3.3 Customer Education. Seller shall provide program introduction materials to Participating Customers. The package shall include information that describes how the specific features of the Program will work.
- 3.4 Marketing Campaign. Seller shall be responsible for all costs associated with development, mailing and distribution of marketing material and any associated media costs. In addition to direct mail and email, Seller shall be responsible for outreach to organizations including but not limited to, trade associations and Chambers of Commerce. Seller shall send list of proposed contacts to PSE to review for any existing relationships prior to Seller reaching out to them. Seller shall send this list to the PSE program manager. For earned media engagement and advertising through local publications, Seller shall send list of proposed contacts to PSE Marketing for review prior to outreach. Either Party may identify appropriate marketing outreach events that can be leveraged to increase customer enrollment. When event and outreach opportunities are identified, PSE shall be given the opportunity to schedule and facilitate the event to maintain a presence with its customers. The cost of the event and outreach opportunities shall be incurred by the Party that initiates the request to have the event or outreach.

Co-branding activities will depend on how PSE and Seller coordinate customer outreach; however, the following co-branding terms will apply if deemed appropriate by PSE in its sole discretion:

- Vendor Identification: Vendors will be provided PSE contractor badges. When interacting with PSE customers, these badges must be prominently displayed at all times.
- Business Cards: Contractor business cards must meet PSE contractor corporate standards.
- Clothing: If a vendor representative is wearing logoed apparel while working with customers, it must be a current PSE logoed article in good condition. In the absence of PSE logoed apparel, no other vendor company logos may be worn on Program team person.
- Vehicles: Vehicles driven by vendors to PSE customer sites must have PSE logo prominently displayed along with the vendor's logo or company name.

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- Customer Displays/Events: Customer displays, event materials and marketing collateral shall have PSE logos and other PSE identifiers located on all material (table top displays, canopies, trade show displays, handouts, etc.).
 - Customer Notifications and Digital Properties: Customer-facing notifications including digital communications (e.g., email, SMS), websites, and printed materials should use PSE-branded templates and approved PSE design elements. All written communication to PSE customers shall have PSE logos or other identifiers.
- 3.5 Website. Seller shall provide content for use on PSE's demand response webpage. PSE shall be responsible for website layout and ongoing hosting and maintenance of the site and information on the webpage.
- 3.6 Participating Customer Enrollment Form. For Commercial and Industrial Customers, seller shall be responsible for obtaining executed Notices to Add Participating Facility to be included in the Program system database. Seller will forward executed Notices to Add Participating Facility to PSE (or an electronic record thereof).
- 3.7 Customer Support. Seller will provide same day customer contact or engage the appropriate OEM or vendor to respond to Customers relating to (as applicable) (i) the quality of any equipment sold, (ii) the quality of the installation service, (iii) the Customer's satisfaction with the services or with the equipment provided, (iv) scheduling repairs to the equipment installed by Seller (v) Customer inquiries about enrollment status, (vi) Customer inquiries about incentive payments, or (vii) Customer inquiries about Program performance reporting as a result of event participation. Seller also shall develop and implement a process for the management and resolution of customer complaints in an expedited manner including: (a) ensuring adequate levels of professional customer service staff; (b) direct access of customer complaints to supervisory and/or management personnel; (c) documenting each customer complaint upon receipt; and (d) elevating any complaint that is not resolved within 5 Business Days of receipt to PSE. Seller will provide in a secure manner a detailed log and copies of all customer complaints to PSE no later than 7 days after the end of each calendar month during the Term, provided that Seller also will provide such log and copies promptly and in a secure manner at any time upon request by PSE. The customer complaint log and copies only will be used for the purpose of performing under the Agreement and will be protected as Confidential Information.
- 3.8 Customer Contact Log. In addition to the requirements set forth in Section 3.7, Seller is responsible for maintaining an electronic customer contact log of customers interested in participating in the Program and results from the inquiries. The customer contact log shall include customer name, facility address, contact name and phone

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number and customer feedback. Such log only will be used for the purpose of performing under the Agreement and will be protected as Confidential Information. Seller also will provide such log promptly and in a secure manner at any time upon request by PSE.

- 3.9 Cross-cultural and Multilingual Customer Experience. All customer-facing materials and communications in languages other than English should be transcreated (not simply translated), to authentically represent the voice, tone and experience of the customers PSE serves. Transcreation reinforces PSE's principles on providing equitable program access for all customers, in a manner that reflects the diverse communities in PSE's service area. Multiple languages may be represented as dominant, and this should be represented in program communications. [All program materials will be provided in English by default. PSE may request, in writing, transcreation to other languages and such transcreation will incur additional fees depending on scope and complexity].
- 3.10 Customer Incentives. Seller may pay customers incentives to enroll in the Program in consultation with PSE; however, Seller has final determination on the quantity of incentives it will provide under this Agreement. PSE may provide its own incentives to augment recruitment economics, in addition to those provided by Seller.