

## CAPACITY BIDDING PROGRAM AGGREGATOR AGREEMENT

This Agreement (“Agreement”) for Aggregators Participating in the Capacity Bidding Program is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between Southern California Edison Company (“SCE”), a corporation organized and existing under the laws of the State of \_\_\_\_\_ California, \_\_\_\_\_ and

\_\_\_\_\_ (“Aggregator”), a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_. SCE and Aggregator may sometimes be referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, the California Public Utilities Commission (“CPUC”) has authorized the Capacity Bidding Program (“CBP”), a capacity bidding program with Day-Of and Day-Ahead options as set forth in SCE’s Schedule CBP, (“Schedule CBP”), which is attached hereto as **Attachment A** and incorporated herein by this reference, whereby SCE pays eligible Aggregators for participating in Schedule CBP; and

WHEREAS, the CPUC has authorized the participation of Aggregators in Schedule CBP, and Aggregator desires to participate in SCE’s CBP subject to the applicable SCE tariff rules and Schedule CBP.

NOW, THEREFORE, in consideration of the mutual undertakings set forth below, the Parties agree as follows:

### I. AGGREGATOR’S OBLIGATIONS

A. Subject to Schedule CBP. Aggregator’s status in SCE’s CBP shall be as an “Aggregator” under Schedule CBP. Aggregator shall be subject to all applicable tariff rules and regulations (which rules and regulations are hereby incorporated herein as an integral part of this Agreement), including, but not limited to, the rates, terms and conditions set forth in Schedule CBP, as such rules and regulations may be amended from time to time. If the CPUC approves any modification to Schedule CBP, any such modification shall be incorporated herein and this Agreement will continue in full force and effect as to Schedule CBP as so modified, unless and until the Parties execute a new agreement, or unless and until SCE or Aggregator terminates this Agreement.

B. Aggregated Group. Aggregator shall group customer service accounts, located within SCE’s service territory, for purposes of receiving service under Schedule CBP as an Aggregator. Such Aggregator shall receive payments or when applicable pay penalty charges, whereby it is the Aggregator who is served under Schedule CBP, not the individual customers of an Aggregator. Aggregator shall be solely responsible for having the appropriate contractual or other arrangements with each customer within an Aggregator’s group. SCE shall not be responsible for monitoring, auditing, reviewing or enforcing such arrangements. Aggregator acknowledges and agrees that it is the Aggregator, not the customer, who is subject to the terms and conditions of Schedule CBP and this Agreement.

C. Aggregator Service Establishment. Aggregator must satisfy the following requirements before Aggregator can provide Aggregator services in connection with Schedule CBP:

1. Aggregator must submit an executed Capacity Bidding Program Aggregator Agreement.
2. Aggregator must satisfy SCE’s creditworthiness requirements as specified in Section IV below.

D. Required Notice to Add or Delete Customer Service Accounts. Once Aggregator has entered into the appropriate contractual or other arrangements with a customer who participants in an Aggregator's group, Aggregator shall deliver to SCE a "Notice by Aggregator to Add or Delete Customer Service Accounts," attached hereto as **Attachment B**, adding such customer's service account(s) to one of Aggregator's groups. Aggregator shall notify SCE that it has removed a customer service account from its group by delivering to SCE a "Notice by Aggregator to Add or Delete Customer Service Accounts" removing such customer service account(s) from one of Aggregator's groups. Aggregator shall deliver such Notices to SCE by facsimile or email to:

SCE Tariff Programs and Services  
Attn: CBP Program Manager  
Facsimile: 626-633-3460  
Email: DRP@sce.com

Mail the signed original to: SCE Tariff Programs and Services  
Attn: CBP Program Manager  
Southern California Edison Company  
P.O. Box 800  
Rosemead, CA 91770

Aggregator's delivery of a "Notice by Aggregator to Add or Delete Customer Service Accounts" adding one or more customer service accounts to one of Aggregator's groups shall be required before Aggregator can submit Capacity Nominations containing any part of the customer service account's load or receive any payment for such Capacity Nomination.

E. Secure Customer Participation in Measurement and Evaluation Activities. Aggregator shall agree, and shall cause each customer service account of an Aggregator's group to agree, to (i) allow the California Energy Commission and its authorized representatives reasonable access to customer's facilities to conduct measurement and evaluation activities related to CBP; and (ii) participate in and complete all evaluation surveys received from SCE and/or the CEC related to CBP. Aggregator's failure to secure these agreements may result in the termination of this Agreement and/or a determination by SCE that Aggregator is ineligible for service under Schedule CBP.

F. Timeliness and Due Diligence. Aggregator shall exercise due diligence in meeting its obligations and deadlines under Schedule CBP and this Agreement so as to facilitate customer participation through Aggregator in CBP.

## II. GENERAL TERMS

- A. Definitions. Except where explicitly defined herein, the capitalized terms used in this Agreement shall have the meanings set forth in Schedule CBP.
- B. SCE Not Liable for Aggregator Service. SCE has no obligations to a customer with one or more service accounts participating in an Aggregator's group in CBP. Such customer must look to Aggregator to carry out the responsibilities associated with Aggregator's service.
- C. Customer-Specific Usage or Meter Data. SCE will provide customer-specific usage or meter data to Aggregator, provided SCE has received written authorization from the customer to release such information to Aggregator, in the form attached hereto as **Attachment C** ("Authorization to Receive Customer Information or Act on a Customer's Behalf"). Subject to the customer's authorization, SCE will provide a maximum of the most recent 12 months of customer usage data or the amount of data for that specific service account. Customer information will be released to the customer or its authorized agent up to two times per year per service account at no cost to the requesting party. Thereafter, SCE will have the ability to assess a processing charge. An authorized agent receiving such customer information will not further release the information to others without the customer's explicit consent.
- D. Customer Inquiries. Customer inquiries concerning Aggregator's services should be directed to Aggregator.

## III. LIMITATION OF LIABILITIES

SCE shall not be liable to the customer or Aggregator for any damages caused by SCE's conduct in compliance with, or as permitted by, Schedule CBP or other tariffs, this Agreement and associated legal and regulatory requirements related to CBP.

SCE's liability to Aggregator for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in SCE's performance of this Agreement shall be limited to the amount of direct damage actually incurred. In no event shall SCE be liable to Aggregator for any indirect, special, consequential or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

SCE shall not be liable to any customer for any damages caused to the customer by any failure by Aggregator to comply with SCE's tariffs, this Agreement and associated legal and regulatory requirements related to Direct Access service.

The CPUC shall have initial jurisdiction to interpret, add, delete or modify any provision of Schedule CBP or this Agreement, and to resolve disputes regarding SCE's performance of its obligations under Schedule CBP or other tariffs, or this Agreement.

SCE shall not be liable to the customer for any damages caused by Aggregator's failure to perform any commitment to the customer.

Aggregator is not SCE's agent for any purpose. SCE shall not be liable to the customer for any damages resulting from any acts, omissions, or representations made by Aggregator in connection with soliciting customers for Aggregator's services or performing any of its functions in CBP.

#### **IV. CREDIT REQUIREMENTS**

A. Credit Requirements. SCE shall require Aggregator to establish its creditworthiness through evaluations, deposits, or other security in the manner described below to cover Aggregator's payment liabilities to customers incurred as a result of customers' participation in an Aggregator's group under the terms and conditions of Schedule CBP. Aggregator may establish its creditworthiness through any one of the following. Upon the establishment of such creditworthiness, SCE upon request will refund Aggregator's security deposits, if any, then being held to secure payment of liabilities to customers incurred as a result of customers' inclusion in an Aggregator's group under the terms and conditions of Schedule CBP.

1. Credit Evaluation

Aggregator with a demonstrable current credit rating of Baa2 or higher from Moody's or BBB or higher from Standard and Poor's, Fitch or Duff & Phelps, is deemed to be creditworthy unless SCE determines that a material change in the Aggregator's creditworthiness has occurred. SCE requires Aggregator to complete a credit application including financial information reasonably necessary to establish credit. The creditworthiness evaluation may be conducted by an outside credit analysis agency, determined by SCE, with final credit approval granted by SCE. This evaluation will be completed within 10 business days. Credit reports will remain strictly confidential between the credit analysis agency and SCE. A credit application processing fee, as approved by the CPUC, may be charged to offset the cost of determining the Aggregator's creditworthiness.

2. Security Deposits

Aggregator may submit and maintain a cost-based security deposit in lieu of submitting to or being qualified under a creditworthiness evaluation. The amount of the security deposit required to establish credit will be twice the estimated monthly payment liabilities to customers incurred as a result of customers' participation in an Aggregator's group participating in CBP, where the estimate is based on the last 12 months of data for such customers' participation in an Aggregator's group. The initial value of the security deposit will be estimated by Aggregator to cover its expected customer base and will be adjusted as necessary from time to time to meet the security requirements based on changes in Aggregator's customer base. Security deposits may be in the form of (1) cash deposits, with interest earned at the 3-month commercial paper rate, (2) letters of credit, defined as irrevocable and renewable issued by a major financial institution acceptable to SCE, (3) surety bonds, defined as renewable and issued by a major insurance company acceptable to SCE, or (4) guarantees from Aggregator's parent company or subsidiary with a credit rating of Baa2 or higher from Moody's or BBB or higher from Standard and Poor's, Fitch or Duff & Phelps, unless SCE determines that a material change in the guarantor's creditworthiness has occurred, or, in other cases, through the credit evaluation process described above. Security deposits must be posted with SCE prior to the Aggregator's participation in CBP. Security deposits posted with SCE which are in excess of outstanding liabilities owed to SCE and/or customers who participated in an Aggregator's group will be returned to Aggregator within approximately 60 days after the expiration or termination of this Agreement.

3. Security Deposit Payment Timetable

Aggregator is obligated to post a security deposit with SCE prior to Aggregator's participation in CBP. Such a deposit shall not be required until three days before Aggregator can submit Capacity Nominations in accordance with Schedule CBP. Unless and until Aggregator's security deposit is received, Aggregator shall not be entitled to submit Capacity Nominations in accordance with Schedule CBP or receive any payment for Recorded Reduced Capacity and Recorded Reduced Energy. Aggregator's failure to timely post the required security deposit may result in the termination of this Agreement and/or a determination by SCE that Aggregator is ineligible to participate in CBP.

4. Interest on Cash Deposit

SCE will pay interest on cash deposits, except as provided below, calculated on a daily basis, and compounded at the end of each calendar month, from the date fully paid to the date of refund by check or credit to Aggregator's account. The interest rate applicable in each calendar month shall be set forth in Rule 7; except that when a refund is made within the first fifteen days of a calendar month the interest rate applicable in the previous month shall be applied for the elapsed portion of the month in which the refund is made.

5. Ongoing Maintenance of Credit

To assure continued validity of established unsecured credit, Aggregator shall promptly notify SCE of any material change in its credit rating or financial condition. Aggregator shall also furnish evidence of an acceptable credit rating or financial condition, as set forth above, to SCE upon request. In the event SCE determines that Aggregator's, or Aggregator's guarantor's, creditworthiness has materially changed, as set forth above, and Aggregator does not rectify or provide a security deposit commensurate with the change in creditworthiness, then SCE may terminate this Agreement pursuant to Section VIII below.

6. Additional Documents

Aggregator shall execute and deliver all documents and instruments (including, without limitation, security agreements and SCE financing statements) reasonably required from time to time to implement the provisions set forth above and to perfect any security interest granted to SCE.

**V. PAYMENT**

A. Payment Terms. During the term of this Agreement, SCE shall make any payments (after deducting any penalties due to SCE) due to Aggregator pursuant to the terms and conditions of Schedule CBP within sixty (60) calendar days following the end of each operating month by issuing a bill credit or a check payable to Aggregator and mailed to the following address:

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address 1: \_\_\_\_\_  
Address 2: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

B. Disputed Bills or Charges. Aggregator agrees to resolve any disputed bills and/or charges in accordance with the "Resolution of Disputes" provision of Section XII.D below.

## **VI. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants that it is and shall remain in compliance with all applicable laws.

Each Party represents and warrants that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.

Each Party shall exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement, and carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

With each submission of a "Notice by Aggregator to Add/Delete SCE Customer Service Accounts," adding a customer service account, and until such time as Aggregator submits such Notice for the removal of such customer from Aggregator's representation, Aggregator represents and warrants that:

- (a) Each customer participating in an Aggregator's group has voluntarily elected to such participation;
- (b) Aggregator has entered into the appropriate contractual or other arrangements with such customer whereby such customer has authorized Aggregator to receive payments from and to pay penalty charges to SCE under the terms and conditions of Schedule CBP.

## **VII. TERM**

The term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect until terminated pursuant to Section VIII below.

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## **VIII. TERMINATION**

A. Termination at CPUC Direction. SCE may terminate this Agreement upon fifteen (15) days written notice to Aggregator if the CPUC orders the termination of this Agreement or Schedule CBP.

B. Termination for Default: Either Party may terminate this Agreement upon written notice to the other Party if the other Party breaches any material obligation under this Agreement and fails to cure such breach within fifteen (15) days after receiving written notice of the breach.

C. Effect of Termination. Upon SCE's issuance of a notice of termination of this Agreement for default by Aggregator, SCE shall have the right to solicit the direct participation in CBP of customers who had participated in an Aggregator's group who are eligible to participate directly in CBP.

### **IX. INDEMNIFICATION**

A. Indemnification of SCE. To the fullest extent permitted by law, Aggregator shall indemnify, defend and hold harmless SCE, and its parent company, subsidiaries, affiliates and their respective shareholders, officers, directors, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including without limitation reasonable attorneys' fees (a "Claim"), resulting from (a) any breach of the representations, warranties, covenants and obligations of Aggregator under this Agreement, (b) any act or omission of Aggregator, whether based upon Aggregator's negligence, strict liability or otherwise, in connection with the performance of this Agreement, or (c) any third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any way to Aggregator's performance or nonperformance under this Agreement. This indemnification obligation shall not apply to the extent that such injury, loss or damage is caused by the willful misconduct of SCE or SCE's sole negligence.

B. Defense of Claim. If any Claim is brought against the Indemnified Parties, Aggregator shall assume the defense of such Claim, with counsel reasonably acceptable to the Indemnified Parties, unless in the opinion of counsel for the Indemnified Parties a conflict of interest between the Indemnified Parties and Aggregator may exist with respect to such Claim. If a conflict precludes Aggregator from assuming the defense, then Aggregator shall reimburse the Indemnified Parties on a monthly basis for the Indemnified Parties' defense costs through separate counsel of the Indemnified Parties' choice. If Aggregator assumes the defense of the Indemnified Parties with acceptable counsel, the Indemnified Parties, at their sole option and expense, may participate in the defense with counsel of their own choice without relieving Aggregator of any of its obligations hereunder.

C. Survival. Aggregator's obligation to indemnify the Indemnified Parties shall survive the expiration or termination of this Agreement.

### **X. NOTICES**

A. Mailing Address. Except for payments, which shall be made pursuant to Section V above, any formal notice, request, or demand required or permitted under this Agreement shall be given in writing by SCE and Aggregator, and shall be (a) mailed by first-class mail, (b) mailed by registered, certified or other overnight mail, (c) delivered in hand, or (d) faxed with confirmation as set forth below, to the other Party as indicated below, or to such other address as the parties may designate by written notice.

To Aggregator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

To SCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

B. Notices. Notices delivered by hand shall be deemed received when delivered. Notices sent by facsimile shall be deemed received upon receipt but must be confirmed by mail within seventy-two (72) hours. Notices delivered by first class mail shall be deemed received forty-eight (48) hours (not including weekends and holidays) after deposit, postage prepaid, in the U.S. mail, or if certified, registered or overnight mailing is used, as acknowledged by the signed receipt of mailing.

## **XI. CONFIDENTIALITY**

A. Confidentiality. Aggregator shall not disclose any Confidential Information obtained pursuant to this Agreement to any third party, including any affiliates of Aggregator, without the express prior written consent of SCE. As used herein, the term "Confidential Information" means proprietary business, financial and commercial information pertaining to SCE, customer names and other information related to customers, including energy usage data ("Customer Information"), any trade secrets and any other information of a similar nature, whether or not reduced to writing or other tangible form. Confidential Information shall not include: (a) information known to Aggregator prior to obtaining the same from SCE; (b) information in the public domain at the time of disclosure by Aggregator; (c) information obtained by Aggregator from a third party who did not receive the same, directly or indirectly, from SCE; or (d) information approved for release by express prior written consent of an authorized representative of SCE.

B. Use of Confidential Information. Aggregator hereby agrees that it shall use the Confidential Information solely for the purpose of performing under this Agreement. Aggregator agrees to use at least the same degree of care Aggregator uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information.

C. Authorized Disclosure. Notwithstanding any other provisions of this Section XI, Aggregator may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Aggregator 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 or regulatory authority. Prior to making or permitting any such disclosure, Aggregator shall provide SCE with prompt written notice of any such requirement so that SCE (with Aggregator's assistance if requested by SCE) may seek a protective order or other appropriate remedy.

D. Term. The confidentiality provisions set forth in this Section XI shall remain in full force and effect with respect to any Confidential Information until the date that is five (5) years after the date of SCE's disclosure of such Confidential Information to Aggregator pursuant to this Agreement; provided, further, that such confidentiality provisions shall remain in full force and effect with respect to any Customer Information in perpetuity.

E. Remedies. The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Section XI and the obligations of Aggregator are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Section XI by Aggregator, SCE shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to SCE.

## **XII. MISCELLANEOUS**

A. Assignment. This Agreement, and the rights and obligations granted and/or obtained by Aggregator hereunder, shall not be further transferred or assigned by Aggregator without the prior written consent of SCE. Any assignment in violation of this section shall be void.

B. Independent Contractor. Aggregator shall perform its obligations under this Agreement as an independent contractor, and no principal-agent or employer-employee relationship or joint venture or partnership shall be created with SCE.

C. Choice of Law. This Agreement shall be carried out and interpreted under the laws of the State of California, without regard to any conflict of law principles thereof. Except for matters and disputes with respect to which the CPUC is the proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in Los Angeles, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder. The Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

D. Resolution of Disputes. Any dispute arising between the Parties relating to the interpretation of this Agreement or to the performance of a Party's obligations hereunder shall be reduced to writing and referred to the Parties' designated representative for resolution. The Parties shall be required to meet and confer in an effort to resolve any such dispute. Any dispute or need for interpretation arising out of this Agreement which cannot be resolved after discussion between the Parties shall be submitted to the CPUC for resolution.

E. Waiver. Any failure or delay by either Party to exercise any right, in whole or part, hereunder shall not be construed as a waiver of the right to exercise the same, or any other right, at any time thereafter.

F. Governmental Actions. This Agreement shall be subject to the continuing jurisdiction of the CPUC and all orders, rules, regulations, decision or actions of any governmental entity (including a court) having jurisdiction over SCE or this Agreement. The Agreement is subject to such changes or modifications by the CPUC as it may direct from time to time in the exercise of its jurisdiction.

G. Entire Agreement; Amendments. This Agreement, including the Attachments listed below, sets forth the entire understanding of the Parties as to the subject matter hereof, and supersedes any prior discussions, offerings, representations or understanding (whether written or oral), and shall only be superseded by an instrument in writing executed by both Parties. This Agreement shall not be modified by course of performance, course of conduct or usage of trade.

*Attachment A: Schedule CBP*

*Attachment B: Notice by Aggregator to Add or Delete Customer Service Accounts*

*Attachment C: Customer Authorization for Release of Information*

H. Survival. Notwithstanding the expiration or termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement which, by their nature, survive completion or termination. Such provision shall include, without limitation, Sections IX and XI.

I. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

J. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the authorized representatives of SCE and Aggregator have executed this Agreement as of the Effective Date.

SCE:  
SOUTHERN CALIFORNIA EDISON COMPANY

AGGREGATOR:  
\_\_\_\_\_

By: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT A**  
SCHEDULE CBP

**ATTACHMENT B**  
NOTICE BY AGGREGATOR TO ADD OR DELETE SERVICE ACCOUNTS

**ATTACHMENT C**  
CUSTOMER AUTHORIZATION FOR RELEASE OF INFORMATION