**DISTRIBUTED ENERGY RESOURCE AGGREGATION AGREEMENT**

**BETWEEN**

**[SUPPLIER]**

**AND**

**[COMPANY]**

**PARTICIPATING generating facility OR FACILITIES: [Participating generating facility OR FACILITIES NAME(S)]**

This Distributed Energy Resource Aggregation Agreement (“Agreement”) is entered into by and between [Aggregator Name] (“Supplier”), a [form of entity and state of registration], and [Company Name] (“Company”), a California Corporation. Supplier and Company are sometimes referred to herein individually as “Party” or collectively as the “Parties.” In consideration of the mutual promises and obligations stated in this Agreement and its attachments, the Parties agree as follows:

# Article 1. Scope, Purpose, and Related Agreement

## Applicability

1.1.1 This Agreement governs the terms and conditions under which the Supplier will provide the communication functions required under Section Hh of the Company’s California Public Utilities Commission (“CPUC”) approved Electric Rule 21 Tariff (“Rule 21”) on behalf of one or more Participating Generating Facilities that utilize inverter-based technologies.

1.1.2 Each Participating Generating Facility has allowed the Supplier to provide, on its behalf, the communication functions required under Section Hh of Rule 21 consistent with, and pursuant to, the Participating Generating Facility-Aggregation Agreement(s) between the Participating Generating Facility or Facilities and the Company, and attached hereto as Appendix C.

1.1.3 This Agreement incorporates in its entirety the Company’s Rule 21, subject to any modifications the CPUC may direct in the exercise of its jurisdiction. In the event of inconsistency between this Agreement and the terms of Rule 21, the provisions of the latter shall control.

## 1.2 Limitations

Nothing in this Agreement is intended to affect any other agreement between: (a) the Supplier and the Company, or (b) the Supplier and Participating Generating Facility(ies).

## 1.3 Capitalized Terms

When used in this Agreement, terms with initial capitalization that are not defined in Appendix A shall have the meanings specified in the Article in which they are used or in Rule 21.

## 1.4 Summary and Description of the Parties

1.4.1 The Company, to which the Supplier shall transmit information, is located at:

1.4.2 The Supplier certifies that it is not co-located or part of Participating Generating Facility(ies). The Supplier is located at:

1.4.3 As set forth in the Participating Generating Facility-Aggregation Agreement(s), attached hereto as Appendix C, the Supplier shall provide the communication functions required under Section Hh of Rule 21 on behalf of the following Participating Generating Facility or Facilities:

# Article 2. Responsibilities of the Supplier

## 2.1 Compliance with Applicable Laws and Regulations

## The Supplier shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

## 2.2 Communications Functions

2.2.1 The Supplier shall, at no cost to the Company, install, operate, and maintain communication systems located at the Supplier’s premises capable of providing the communication functions required under Section Hh of Rule 21, and transmit these communications between the Company and the Participating Generating Facility or Facilities. This includes, but is not limited to the following capabilities or requirements:

2.2.1.1 The equipment shall be capable of authorized communications;

2.2.1.2 The equipment shall provide real-time monitoring and control;

2.2.1.3 The equipment shall be capable of real-time telemetry data aggregation;

2.2.1.4 The software shall be able to be updated remotely;

2.2.1.5 The transport level protocol shall be TCP/IP;

2.2.1.6 The application-level protocol shall be IEEE 2030.5 (Smart Energy Profile 2.0 (SEP 2)) as defined in the California IEEE 2030.5 Implementation Guide;

2.2.1.7 The Supplier shall maintain direct contact with the Company;

2.2.1.8 The Supplier shall coordinate the transmission of all required data points telemetered to the Company; and

2.2.1.9 The Supplier shall execute advanced smart inverter functionality as determined in Rule 21.

2.2.2 The Supplier shall, at no cost to the Company, install, operate, and maintain management systems located at the Supplier’s premises to ensure (a) the provision of communication functions required under Section Hh of Rule 21, and (b) that the transmission of these communications between the Company and the Participating Generating Facility or Facilities is operating normally. This includes, but is not limited to the following capabilities or requirements:

2.2.2.1 The management system(s) shall maintain real-time monitoring and management of the Supplier’s communication and control system(s) and inform the Company of any outages related to the communication and related impacted Participating Generating Facility or Facilities.

2.2.2.2 The management system(s) shall implement instrumentation and maintain logs demonstrating that the communication systems meet all mandated performance requirements for Participating Generating Facilities’ communications.

## 2.3 Cybersecurity and Privacy Procedures

2.3.1 Prior to the Effective Date of this Agreement, at no cost to the Company, the Supplier shall implement the cybersecurity and privacy procedures set forth in Appendix B. As set forth in Article 2.3.3 below, the Company reserves the right to update the cybersecurity and privacy procedures set forth in Appendix B.

2.3.2 The Supplier shall maintain the cybersecurity and privacy procedures set forth in Appendix B throughout the duration of this Agreement.

2.3.3 The Company reserves the right to revise or update the cybersecurity and privacy procedures set forth in Appendix B at any time. Supplier shall obtain compliance with these revised or updated procedures within thirty (30) days of such revision or update.

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# Article 3. Inspection, Testing, and Right of Access

## 3.1 Equipment Testing and Inspection

3.1.1 The Supplier shall be responsible for performing the tests and inspections of its communication systems set forth in Appendix B prior to the provision of communication functions under this Agreement. Such testing and inspection shall be at the sole expense of the Supplier. The Supplier shall provide the Company a written test report when such testing and inspection is completed, as set forth in Appendix B. Any and all testing shall include the end-to-end system environment reflecting the Participating Generating Facility(ies) and not simply the Supplier’s internal systems environment.

3.1.2 The Company shall have the right, but not the obligation, to inspect and approve the Supplier’s communication system equipment and software at any time during installation or testing. The Company may elect to inform the Supplier of any problems the Company observes and any recommendations it has for correcting such problems with the communication system equipment, and Supplier shall address such problems to the reasonable satisfaction of the Company. Should the Supplier fail to address the problems to the reasonable satisfaction of the Company, the Company shall have the right not to authorize the use of the Supplier’s communication systems.

## 3.2 Right of Access

At reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Company shall have access to the communications equipment and software located at the Supplier’s premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its Customers.

# Article 4. Effective Date, Term, and Termination

## 4.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

## 4.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of \_\_\_\_\_\_ (xx) years from the Effective Date or such other longer period as the Parties may agree and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 4.3 of this Agreement.

## 4.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

4.3.1 The Parties may agree in writing to terminate this Agreement.

4.3.2 The Supplier may terminate this Agreement at any time by giving the Company and the Participating Generating Facility or Facilities \_\_\_\_\_\_ (xx) Business Days written notice.

4.3.3 The Company may terminate this Agreement after Default pursuant to Article 5.6.

4.3.4 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

# Article 5. Assignment, Liability, Indemnity, Uncontrollable Force, Consequential Damages, and Default

## 5.1 Assignment

## Supplier shall not voluntarily assign its rights nor delegate its duties under this Agreement without the Company’s written consent. Any assignment or delegation Supplier makes without the Company’s written consent shall not be valid. The Company shall not unreasonably withhold its consent to Supplier’s assignment of this Agreement.

## 5.2 Limitation of Liability

5.2.1 Each Party’s liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney’s fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever.

5.2.2 The Company shall not be liable to the Supplier in any manner, whether in tort or contract or under any other theory, for loss or damages of any kind sustained by the Supplier resulting from termination of the Participating Generating Facility-Aggregation Agreement(s), attached as Appendix C.

## 5.3 Indemnity

5.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in article 5.2.

5.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party’s action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

5.3.3 If an indemnified person is entitled to indemnification under this article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

5.3.4 If an indemnifying party is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

5.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this article may apply, the indemnified person shall notify the indemnifying party of such fact. Any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

## 5.4 Consequential Damages

Other than as expressly provided for in this Agreement, the Company shall not be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

## 5.5 Uncontrollable Force

5.5.1 As used in this article, an Uncontrollable Force Event shall mean “any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, breakage or accident to machinery or equipment, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond the reasonable control of the Company or Supplier which could not be avoided through the exercise of Good Utility Practice. An Uncontrollable Force Event does not include an act of negligence or intentional wrongdoing by the Party claiming Uncontrollable Force.”

5.5.2 If an Uncontrollable Force Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Uncontrollable Force Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Uncontrollable Force Event. The notification must specify in reasonable detail the circumstances of the Uncontrollable Force Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Uncontrollable Force Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Uncontrollable Force Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

## 5.6 Default

5.6.1 Failure to provide the communication functions set forth in Article 2.2 or to maintain the cybersecurity and privacy procedures set forth in Article 2.3 shall constitute a Default on the part of the Supplier, subject to article 5.6.2. Until the Default is cured, Participating Generating Facility(ies) must be disconnected from the electric system or adjusted to operating conditions set forth by the Company.

5.6.2 No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of an Uncontrollable Force Event as defined in this Agreement or the result of an act or omission of the Company. Upon a Default, the Company shall give written notice of such Default to the Supplier. Except as provided in article 5.6.3, the Supplier shall have (xx) days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within (xx) days, the Supplier shall commence such cure within (xx) days after notice and continuously and diligently complete such cure within (xx) from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

5.6.3 If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the Company shall have the right to terminate this Agreement by written notice at any time until cure occurs, and whether or not the Company terminates this Agreement, to recover from the Supplier any damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

# Article 6. Insurance Requirements

## 6.1 General Liability Insurance

6.1.1 In connection with the Supplier’s performance of its duties and obligations under this Agreement, the Supplier shall, at its own expense, maintain in force throughout the period of this Agreement, commercial general liability insurance for third-party bodily injury and property damage with a limit of not less than $ per occurrence and $\_\_\_\_\_\_\_\_\_ in the aggregate. Such general liability insurance shall include coverage for Premises-Operations, Products/Completed Operations, Explosion, Collapse, and Underground, and Contractual Liability.

6.1.2 The commercial general liability insurance required in Article 6.1.1 shall, by endorsement to the policy or policies, (a) include the Company as an additional insured; (b) contain a severability of interest clause or cross-liability clause; and (c) state that coverage provided is primary and is not in excess to or contributing with any insurance or self-insurance maintained by the Company. Supplier shall provide for thirty (30) Calendar Days’ written notice to the Company prior to cancellation, termination, alteration, or material change of such insurance.

## 6.2 Certificate of Insurance

6.2.1 The certificate of insurance provided to the Company shall evidence the insurance required above in Article 6.1.

6.2.2 Supplier agrees to furnish certificates of insurance and endorsements to the Company prior to the provision of any communication functions under this Agreement. The Company shall have the right to inspect or obtain a copy of the original policy or policies of insurance.

## 6.3 Self-Insurance

6.3.1 If the Supplier is self-insured with an established record of self-insurance, the Supplier may comply with the following in lieu of Articles 6.1 through 6.2:

6.3.1.1 The Supplier shall provide to the Company, at least thirty (30) Calendar Days prior to the provision of any communication functions under this Agreement, evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required under Article 6.1.

6.3.1.2 If the Supplier ceases to self-insure to the level required hereunder, or if the Supplier is unable to provide continuing evidence of the Supplier’s ability to self-insure, the Supplier agrees to immediately obtain the coverage required under Article 6.1.

6.4 Notification

6.4.1 The Supplier agrees to notify the Company whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of the insurance required under Article 6.1, whether or not such coverage is sought.

6.4.2 All insurance certificates, statements of self-insurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

Company:

Attention:

Address:

City: State: Zip:

Phone:

Fax:

# Article 7. Confidentiality

## 7.1 Definition of Confidential Information

The confidentiality provisions applicable to this Agreement are set forth in Rule 21 Section D.7, Confidentiality and in the following provisions included in this Article.

7.1.1 Release of Confidential Information

Neither Party shall release or disclose Confidential Information to any other persons, employees, or consultants, or to parties who may be or are considering providing financing to or equity participation with the Supplier, or to potential purchasers of the Supplier, on a need-to-know basis in connection with these procedures, unless such person has first been advised of the confidentiality provisions of this Article and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article.

7.1.2 Rights

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

7.1.3 No Warranties

By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

7.1.4 Standard of Care

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination; however, in no case shall a Party use less than reasonable care in protecting Confidential Information. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its regulatory requirements.

7.1.5 Order of Disclosure

If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

7.1.6 Remedies

The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party’s breach of its obligations under this Article. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Article, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the breach of this Article, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article.

# Article 8. Disputes

## 8.1 Dispute Resolution

Any dispute arising between the Parties regarding a Party’s performance of its obligations under this Agreement or requirements related to Section Hh of Rule 21 shall be resolved according to the procedures in Rule 21.

# Article 9. Miscellaneous

## 9.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of California, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

## 9.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

## 9.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

## 9.4 Waiver

9.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

9.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

## 9.5 Entire Agreement

This Agreement, including all Attachments, and any incorporated tariffs or Rules, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party’s compliance with its obligations under this Agreement.

## 9.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

## 9.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership 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 or be an agent or representative of, or to otherwise bind, the other Party.

## 9.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, (3) the remainder of this Agreement shall remain in full force and effect, and (4) notification to Participating Generating Facility(ies) provided that Participating Generating Facility(ies) are required to meet communication requirements set forth in Rule 21 within Business Days of such notice.

## 9.9 CPUC Modification

## Unless otherwise ordered by the CPUC, this Agreement at all times shall be subject to such modifications as the CPUC may direct from time to time in the exercise of its jurisdiction.

## 9.10 Review of Records and Data

9.10.1 The Company shall have the right to review and obtain copies of Supplier’s operations and maintenance records, logs, or other information relating to communications functions and/or the transmission of information to the Company.

9.10.2 The Supplier authorizes the Company to release to the California Energy Commission (“CEC”), the CAISO, and/or the CPUC information regarding the Supplier, including its name and location, the number of Participating Generating Facility(ies) it is acting on behalf of and the characteristics of those facilities, and any other relevant operational characteristics as are requested from time to time pursuant to the CEC’s, CAISO’s, or CPUC’s rules and regulations.

# Article 10. Notices

## 10.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (“Notice”) shall be deemed properly given if delivered in person, delivered by recognized national currier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Supplier:

Supplier:

Attention:

Address:

City: State: Zip:

Phone:

Fax:

If to the Company:

Company:

Attention:

Address:

City: State: Zip:

Phone:

Fax:

10.2 A Party may change its address for Notices at any time by providing the other Party Notice of the change in accordance with Article 10.1.

10.3 The Parties may also designate operating representatives to conduct the daily communications, which may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone numbers may be communicated or revised by one Party’s Notice to the other.

**Article 11. Signatures**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Company

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

Title: [Title]

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For the Supplier

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

Title: [Title]

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX A**

**GLOSSARY OF TERMS**

**Aggregator:** An entity that provides the communication capability functions required in Section Hh of Rule 21 on behalf of one or more Generating Facilities that utilize inverter-based technologies.

**Agreement:** Shall have the meaning set forth in the first paragraph of this agreement.

**Applicable Laws and Regulations:**  All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

**Business Day:** Monday through Friday, excluding Federal and State Holidays.

**Calendar Day:** Any day including Saturday, Sunday or a Federal and State Holiday.

**Company:** [ ]

**Generating Facility:** All Generators, electrical wires, equipment, and other facilities, excluding Interconnection Facilities, owned or provided by Producer for the purpose of producing electric power, including storage.

**Good Utility Practice:** Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

**Operating Requirements:** Any operating and technical requirements that may be applicable due to Regional Transmission Organization, the CAISO, balancing authority area, or the Company’s requirements, including those set forth in the Agreement.

**Participating Generating Facility or Facilities:** Generating Facility(ies) that have executed a Participating Generating Facility-Aggregation Agreement with the Company.

**Participating Generating Facility-Aggregation Agreement:** Agreement that has been executed by a Participating Generating Facility with the Company of the Participating Generating Facility’s election to utilize Suppler [\_\_\_\_\_\_\_\_] to fulfill its Rule 21 Section Hh requirements.

**Party or Parties:** The Company, the Supplier, or any combination thereof.

**Reasonable Efforts:** With respect to an action required to be attempted or taken by a Party under the Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Supplier:** [ ]

**APPENDIX B**

**DESCRIPTION OF CYBERSECURITY AND PRIVACY REQUIREMENTS**

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. The Supplier shall therefore meet standards for system infrastructure and operational security, including physical, operational, and cyber-security practices, as set forth herein.

**APPENDIX C**

**Participating Generating Facility-Aggregation Agreement**

**BETWEEN**

**[PARTICIPATING GENERATING FACILITY]**

**AND**

**[COMPANY]**

This Participating Generating Facility-Aggregation Agreement (“Agreement”) is entered into by and between [Participating Generating Facility Name] (“Participating Generating Facility”), a [form of entity and state of registration], and [Company Name] (“Company”), a California Corporation. Participating Generating Facility and Company are sometimes referred to herein individually as “Party” or collectively as the “Parties.” In consideration of the mutual promises and obligations stated in this Agreement and its attachments, the Parties agree as follows:

# Article 1. Scope, Purpose, and Related Agreement

## 1.1 Applicability

1.1.1 This Agreement, in conjunction with the Distributed Energy Resource Aggregation Agreement entered into between [Aggregator Name] (“Supplier”) and the Company on [date], allows the Company to communicate with the Supplier on the Participating Generating Facility’s behalf.

1.1.2 This Agreement incorporates in its entirety the Company’s California Public Utilities Commission (“CPUC”) approved Electric Rule 21 Tariff (“Rule 21”), subject to any modifications the CPUC may direct in the exercise of its jurisdiction. In the event of inconsistency between this Agreement and the terms of Rule 21, the provisions of the latter shall control.

## 1.2 Limitations

Nothing in this Agreement is intended to affect any other agreement between: (a) the Participating Generating Facility and the Company, or (b) the Participating Generating Facility and the Supplier.

## 1.3 Capitalized Terms

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Appendix A to the Distributed Energy Resource Aggregation Agreement or Rule 21.

## 1.4 Summary and Description of the Parties

1.4.1 The Participating Generating Facility is located at:

1.4.2 The Company, to which the Supplier shall provide communication functions on behalf of the Participating Generating Facility under the terms and conditions set forth in the Distributed Energy Resource Aggregation Agreement, is located at:

1.4.3 The Supplier is located at:

# Article 2. Participating Generating Facility Acknowledgments and Obligations

## 2.1 The Participating Generating Facility acknowledges that it has authorized the Supplier to provide the communication functions required under Section Hh of Rule 21 on its behalf. The Participating Generating Facility shall be solely responsible for the terms of any such agreement between it and the Supplier.

2.2 The Participating Generating Facility acknowledges that the Company is allowed to communicate with the Supplier on the Participating Generating Facility’s behalf.

2.3 The Participating Generating Facility shall make the Generating Facility and any of its communications systems reasonably accessible to the Company’s personnel, contractors, or agents if necessary to perform the Company’s duties under Rule 21.

# Article 3. Effective Date, Term, and Termination

## 3.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

## 3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of \_\_\_\_\_\_ (xx) years from the Effective Date or such other longer period as the Parties may agree and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 2.3 of this Agreement.

## 3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 The Parties may agree in writing to terminate this Agreement.

3.3.2 The Participating Generating Facility may terminate this Agreement at any time by giving the Company and the Supplier \_\_\_\_\_\_ (xx) Business Days written notice.

3.3.3 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

# Article 3. Assignment and Limitation of Liability

## 3.1 Assignment

## Participating Generating Facility shall not voluntarily assign its rights nor delegate its duties under this Agreement without the Company’s written consent. Any assignment or delegation Participating Generating Facility makes without the Company’s written consent shall not be valid. The Company shall not unreasonably withhold its consent to the Participating Generating Facility’s assignment of this Agreement.

## 3.2 Limitation of Liability

3.2.1 Each Party’s liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney’s fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever.

3.2.2 The Company shall not be liable to the Participating Generating Facility in any manner, whether in tort or contract or under any other theory, for loss or damages of any kind sustained by the Participating Generating Facility resulting from termination of the Distributed Energy Resource Aggregation Agreement.

# Article 4. Miscellaneous

## 4.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of California, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

## 4.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

## 4.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

## 4.4 Waiver

9.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

9.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

## 4.5 Entire Agreement

This Agreement, including any incorporated tariffs or Rules, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party’s compliance with its obligations under this Agreement.

## 4.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

## 4.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership 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 or be an agent or representative of, or to otherwise bind, the other Party.

## 4.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

## 4.9 CPUC Modification

## Unless otherwise ordered by the CPUC, this Agreement at all times shall be subject to such modifications as the CPUC may direct from time to time in the exercise of its jurisdiction.

## 4.10 Release of Data

The Participating Generating Facility authorizes the Company to release to the California Energy Commission (“CEC”), the CAISO, and/or the CPUC information regarding the Participating Generating Facility, including the characteristics of its Generating Facility, and any other relevant operational characteristics as are requested from time to time pursuant to the CEC’s, CAISO’s, or CPUC’s rules and regulations.

# Article 5. Notices

## 5.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (“Notice”) shall be deemed properly given if delivered in person, delivered by recognized national currier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Participating Generating Facility:

Participating Generating Facility

Attention:

Address:

City: State: Zip:

Phone:

Fax:

If to the Company:

Company:

Attention:

Address:

City: State: Zip:

Phone:

Fax:

5.2 A Party may change its address for Notices at any time by providing the other Party Notice of the change in accordance with Article 5.1.

5.3 The Parties may also designate operating representatives to conduct the daily communications, which may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone numbers may be communicated or revised by one Party’s Notice to the other.

**Article 6. Signatures**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Company

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

Title: [Title]

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For the Participating Generating Facility

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

Title: [Title]

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_