

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND NOBLE AMERICAS ENERGY SOLUTIONS LLC

This Agreement is entered into this ____ day of April, 2016, by and between the Peninsula Clean Energy Authority, a joint powers authority, hereinafter called "PCEA" and Noble America Energy Solutions LLC, hereinafter called "Contractor." PCEA and Contractor may be referred to hereinafter individually as "Party" and collectively as "Parties".

* * *

Whereas, PCEA may contract with independent contractors for the furnishing of such services to or for PCEA; and

Whereas, it is necessary and desirable that a Contractor be retained for the purpose of providing data management and establishing a customer call center for PCEA;

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services
Exhibit B—Payments and Rates
Attachment IP – Intellectual Property

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for PCEA in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A. Contractor shall have no obligation to perform services for which payment has not been appropriated. except that, as provided by Exhibit B, Contractor will not invoice PCEA nor will PCEA owe payments to Contractor sooner than sixty (60) calendar days following the date on which the first PCEA customer meter becomes active.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. PCEA reserves the right to withhold payment if PCEA determines that the quantity or quality of the work performed is unacceptable. In the event that the PCEA makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the PCEA at the time of contract termination or expiration. Contractor will not invoice PCEA nor will PCEA owe payments to Contractor sooner than sixty (60) calendar days following the date on which the first PCEA customer meter becomes active.

Unless otherwise indicated in Exhibit B, Contractor shall invoice PCEA monthly for all payments related to service performed during the previous month. Payments shall be due within thirty (30) days after the date of invoice. All payments must be made in U.S. dollars.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from April 14, 2016 through July 1, 2018.

5. Termination

- a) Early Termination Due to Cancellation of CCA program. If PCEA determines on or before July 1, 2016 in its sole and absolute discretion, not to proceed with the CCA program, PCEA may terminate this Agreement by giving written notice to Contractor as provided in Section 18 of this Agreement. In that event, no payments will be owed or paid.
- b) Termination for Default. Either PCEA or Contractor may terminate this Agreement if any one of the following events (each a "Default") occurs with respect to the other Party: (i) with respect to PCEA, PCEA fails to pay amounts due hereunder and such failure continues for twenty-one (21) business days after written notice from Contractor; in accordance with Section 3 of Agreement, (ii) a Party defaults in the observance or performance by a Party of any such Party's material covenants or agreements in this Agreement (other than a default in a payment obligation) and such default continues uncured for ~~thirty sixty (20360)~~ Business Days after written notice is given to such Party failing to perform its covenants or agreements under this Agreement, PROVIDED, HOWEVER, that for such events which require more than ~~thirtysixty (360)~~ business days, to cure, then Contractor shall have such additional time as may reasonably be required to effect such cure PROVIDED, that Contractor diligently and continuously pursues such cure; or; (iii) either Party makes an assignment or any general arrangement for the benefit of creditors or files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced) or is unable to pay its debts as they fall due.
- c) Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing Services hereunder; and (b) any and all payment obligations of PCEA under this agreement will become due immediately. Upon such expiration of termination, and upon request of PCEA, Contractor shall reasonably cooperate with PCEA to ensure a prompt and efficient transfer of all data documents and other materials to a new service provider in a manner such as to minimize the impact of expiration or termination on PCEA's customers. PCEA agrees to pay Contractor compensation for services performed in connection of such transfer, to the extent not contemplated in the Agreement.
- d) PCEA reserves the right to transition all call center duties from Contractor to PCEA, with at least 90 days' notice to Contractor. PCEA shall be responsible for any additional actual infrastructural or actual programming costs incurred by Contractor to facilitate this transition. Contractor will invoice the actual costs to PCEA without any added charges.
- e) PCEA reserves the right to transition call center duties from Contractor to PCEA in phases, according to all needs and demands related to all tiers, overflow call center options, and third-party translation services. PCEA shall be responsible for any additional actual infrastructural or actual programming costs incurred by Contractor to facilitate this transition. Contractor will invoice the actual costs to PCEA without any added charges.

5.5 Transition At Time Of Termination Or Expiry

- (a) In the event of termination or expiry of this Agreement, in whole or in part, Contractor shall take commercially reasonable steps to ensure the orderly and effective transition of the services to PCEA and/or a successor contractor ("Transition Assistance").
- (b) All references in this Section to termination or expiry shall include partial and complete termination or expiry, cancellation or cessation unless the context otherwise requires.
- (c) In relation to any partial termination or expiry the provisions of this Schedule shall apply only to those parts of the Services subject to such partial termination or expiry.
- (d) Each reference to an obligation of Contractor under this Section shall be deemed to include an obligation on Contractor to procure that all relevant sub-contractors to comply with such obligation.

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5.5.1 Transition Assistance Period

The Transition Assistance Period means a period of such duration as is determined by PCEA but be limited to a maximum of six (6) months commencing on the earlier of:

- (a) service of notice to terminate this Agreement;
- (b) in case of a repudiatory breach of this Agreement, the date on which the non-defaulting party accepts such repudiatory breach as terminating this Agreement; or
- (c) the expiry of the initial term or any extended term (as the case may be).

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5.5.2 Transition Assistance Election

During the Transition Assistance Period, the services will be discontinued or transitioned to a Successor Contractor at PCEA's discretion and such transition shall then be performed in accordance with the Transition Assistance plan and this Section. From the commencement of the Transition Assistance Period and until a date pre-agreed or such provided to Contractor by PCEA with a minimum of thirty days' notice. All the terms and conditions of this Agreement will remain unchanged during the Transition Assistance Period (including but not limited to rates and charges, discounts, credits, waivers, service levels and key personnel).

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5.5.3 Transition Assistance Planning

Promptly following the commencement of the Transition Assistance Period (and in any event within fourteen (14) days), or earlier at the request of PCEA, ~~Vendor~~Contractor shall develop with reasonable assistance from PCEA a written transition assistance plan specifying in detail all activities, and the corresponding timing of such activities, necessary to facilitate an orderly and effective transition of the Services ("Transition Plan"). The Transition Plan shall include sections setting out in detail how Contractor will satisfy the specific obligations described in paragraph 5.5.4 below.

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5.5.4 Transition Assistance Obligations for Call Center Services (Exhibit A, Section 4)

The Transition Assistance provided by ~~Vendor~~Contractor during the Transition Assistance Period shall include the following services at no additional charge to PCEA:

- (a) providing PCEA or its designees with documentation relating to the services that are necessary or useful to enable the orderly and effective transition of the services to PCEA and/or a successor contractor;

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(b) allowing PCEA to observe Contractor's provision of the services;

(c) providing PCEA and/or a successor contractor with reasonable access to relevant Staff in order to facilitate knowledge transfer, which shall include explanations from such Staff of the services, the manner of their provision and reasonably related documentation and providing answers to reasonable questions from PCEA on the same, provided that Contractor shall not be required to disclose any of commercially sensitive information as part of this process unless such information is necessary for performance of the services by PCEA or a successor contractor following the expiry of the Transition Assistance Period;

(d) Contractor shall provide Transition Assistance in such a manner as to ensure the uninterrupted performance of the services, with no degradation in quality, and avoid disruption in the operation.

e) _____

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5.5.5 Transition Assistance Obligations for Data Manager Services (Exhibit A, Sections 1.2,3,5,6 and 7)

(a) Contractor shall provide to PCEA data and documentation, in a format or formats acceptable by PCEA, and other information reasonably requested by PCEA in connection with the transition that is sufficient to enable successor contractor to fully assume the provision of the transitioning services.

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(b) The processes, systems, and people related to the Data Manager Services within this agreement that are unique to Contractor, and therefore will not be included in the Transition Assistance Planning.

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6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") provided by PCEA to Contractor under this Agreement shall remain the property of PCEA and shall be promptly returned to PCEA. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of PCEA and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of PCEA employees. Contractor understands that PCEA is a Joint Powers Authority made up of the County of San Mateo and each Town and City within the County. Contractor further understands that this Agreement is made solely with PCEA and not with any member jurisdiction of the JPA. Contractor further understands and agrees that pursuant to the Joint Powers Authority Agreement and California law the debts, liabilities and obligations of PCEA are its sole responsibility and not the responsibility of its constituent member jurisdictions. Contractor further agrees that it will not seek to recover, or cooperate with any other person or entity to seek to recover, any debt, liability or obligation related to this Agreement from any constituent member jurisdiction of PCEA. Each Party represents and warrants to the other that: (i) it is validly existing and in good standing in the jurisdiction of its formation; (ii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any agreements to

which it is a party or any law applicable to it; (iii) it has not filed, does not plan to file, nor has it had filed against it, any bankruptcy proceeding; (iv) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); (v) it is not a party to or subject to any commitment that may restrict or interfere with this Agreement.

8. **Hold Harmless**

a. General Hold Harmless

To the extent permitted by law, Contractor shall indemnify and save harmless PCEA and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor or actions taken under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following, provided that they arise out of acts or omission of the Contractor, Contractor's employees or subcontractors:

(A) Injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) Damage to any property of any kind whatsoever and to whomsoever belonging;

(C) Any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) Any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of PCEA and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which PCEA has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct, or under a strict liability theory.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

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This Hold Harmless shall apply only to the extent of the extent of the Indemnifying Party's negligence, willful misconduct or fault acts and omissions, which shall be deemed to include any contractor, subcontractor, and/or employee of the Indemnifying Party, including any such person or entity under Indemnifying Party's direction and control.

a. In no event will Contractor be responsible for indemnifying or defending PCEA for acts or omissions of third parties who are neither sub-contractors, officers, agents, servants or employees of Contractor and nor under Contractor's control.

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Each party ("Indemnifying Party") Contractor shall indemnify and save harmless PCEA the other party ("Indemnified Party") and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work, or services or actions taken required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following, that are caused as a result of the Indemnifying Party's negligence or willful misconduct:

(A) Injuries to or death of any person, including Contractor or its the employees/officers/agents of either party;

~~(B) Damage to any property of any kind whatsoever and to whomsoever belonging;~~

~~(C) Any other loss or cost including but not limited to that caused by the concurrent active or passive negligence of PCEA and/or its officers, agents, employees, or servants;~~

~~However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which PCEA has been found in a court of competent jurisdiction to be solely liable by reason of its own acts or omissions.~~

~~The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.~~

g-b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement. Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless PCEA from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) PCEA notifies Contractor promptly in writing of any notice of any such third-party claim; (b) PCEA cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without PCEA's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on PCEA, impair any right of PCEA, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of PCEA without PCEA's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes PCEA's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for PCEA the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to PCEA under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for PCEA (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by PCEA in a manner prohibited by this Agreement.

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The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

- a) With the exception of subsection (b), below Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of PCEA, which shall not be unreasonably withheld, conditioned or delayed. Any such assignment or subcontract without PCEA's prior written consent shall give PCEA the right to automatically and immediately terminate this Agreement without penalty or advance notice.
- b) PCEA consents to Contractor subcontracting with AnswerNet for the purposes of providing the services described in Exhibit A to this Agreement.

10. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by PCEA's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish PCEA with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. ~~These certificates shall specify or be endorsed to provide that thirty (30) days~~ Contractor shall provide notice ~~must be given~~ in writing ~~within 30 days or as soon as feasible~~, to PCEA of any pending material change in the limits of liability or of any cancellation or material modification of the policy. ~~Such notice shall be provided to PCEA within thirty (30) days of Contractor receiving such notice.~~

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b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury,

including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- Comprehensive General Liability... \$1,000,000
- Professional Liability..... \$1,000,000

PCEA and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to PCEA and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the PCEA or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, PCEA, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

12. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall, to the extent applicable to Contractor or Contractor's performance, be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or other governmental financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

13. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to PCEA upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Equal Benefits

With respect to the provision of benefits to its employees, Contractor is prohibited from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse=., Contractor must certify which of the following statements is/are accurate:

- Contractor offers the same benefits to its employees with spouses and its employees with domestic partners (excluding differences of income tax treatment).
- Contractor offers in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- Contractor is exempt from having to provide equal benefits because it has no employees or does not provide benefits to employees' spouses.
- Contractor does not offer equal benefits and a waiver must be sought.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. ~~HR to approve!~~

f. History of Discrimination

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other

investigative entity. If this box is checked, Contractor shall provide PCEA with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

~~Contractor shall report to the PCEA Manager the filing in any court or with any administrative agency of any complaint or formal allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 12, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender, sexual orientation, religion, or race-based discrimination).~~

~~In the event that Contractor has formally been found to be in violation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 12, above, after full adjudication of the matter including all rights of appeal by the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of such discrimination allegations, including courts of law, only then shall such violation be considered a Default under this Agreement. Contractor shall notify the PCEA Manager of such findings as soon as reasonably possible upon Contractor receiving such notice itself.~~

~~Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the PCEA Manager, including but not limited to the following:~~

- ~~xv. Termination of this Agreement;~~
- ~~xvi. Disqualification of the Contractor from being considered for or being awarded a PCEA contract for a period of up to three years;~~
- ~~xvii. Liquidated damages of \$2,500 per violation; and/or~~
- ~~xviii. Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the PCEA Manager.~~

~~To effectuate the provisions of this Section, the PCEA Chief Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and PCEA. Subsection (g) will only apply to those Contractor employees who perform work related to this Agreement.~~

20.14. Employee Jury Service

Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. For purposes of this Section, if Contractor has no employees in San Mateo County it is sufficient for Contractor to provide the following written statement to PCEA: "For purposes of PCEA's jury service requirement, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees

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during the term of its Agreement with PCEA, Contractor shall adopt a policy that complies with Section 14 of this Agreement.”

21-15. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after PCEA makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by PCEA, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by PCEA.

(c) Contractor agrees upon reasonable notice to provide to PCEA, to any Federal or State department having monitoring or review authority, to PCEA’s authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

(d) Contractor agrees to maintain and make available to PCEA, during regular business hours, accurate books and accounting records relating to its work under this Agreement. PCEA and Contractor agree that, insofar as Contractor maintains an active trading floor, any such audit, examination, review, etc., will be, at Contractor’s sole option, conducted off of Contractor’s premises. PCEA and Contractor agree to work to minimize the impact of any such audit on Contractor’s operations. Contractor will, upon request, provide PCEA with copies to audit, examine and make excerpts and transcripts from such books and records, and to make audits thereof of data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon PCEA by this Section.

22-16. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document’s date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

23-17. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be

venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. Mediation Prior to Filing a Lawsuit

Except as provided in this Section, the Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, or any other mutually agreed mediator for mediation prior to the filing of a lawsuit ~~prior to filing any legal action in court.~~

Either Party may commence such mediation by providing the other Party a written request for mediation, setting forth the subject of the dispute and the relief requested. Such mediation will conclude no later than forty-five (45) days from the date that such written request was received by the other Party, unless such date should fall on a Saturday, Sunday or recognized holiday, in which case the mediation will conclude by 6pm, Pacific Prevailing Time on the next business day.

The Parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Parties agree that they will participate in the mediation in good faith and that they will share equally in its costs, ~~provided, however, that each Party will bear the cost of its own attorneys.~~

All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any of the mediators employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

~~Either Party may initiate legal action with respect to the matters submitted to mediation by serving a written notice at any time following the initial mediation session or at any time following 45 days from the date of serving the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of legal action if the parties so desire. to this Agreement may: (1) seek judicial equitable relief, or other equitable relief available to it under applicable statutory and/or case law including but not limited to injunctive relief; (2) exercise any self-help rights; and/or (3) any other rights or remedies available to it by contract or applicable statutory or case law, whether such occurs before, during or after the pendency of any negotiation or mediation, provided, however, in the case of (3) that (i) the Party initiating availing itself of its rights and remedies so described will take only such actions as are necessary to preserve its rights during the pendency of the mediation, and (ii) all applicable statutes of limitation and defenses based upon the passage of time shall be tolled during the pendency of the mediation. The Parties will take such action, if any, required to effectuate such tolling.~~

The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary rights or remedies or exercise of self-help remedies, all as provided herein, and the pursuit of any such rights or remedies, shall not constitute a waiver of the right or obligation of any Party, including the plaintiff seeking judicial relief or remedies, to engage in the mediation pursuant to this Article.

At no time prior to the Earliest Initiation Date shall either side initiate litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by agreement of the parties. However,

~~this limitation is inapplicable to a party if the other party refuses to comply with the requirements of this section.~~

~~All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The parties will take such action, if any, required to effectuate such tolling. Not used.~~

19. Information Security

(a) General Information Security. All facilities, devices, and methods used by Contractor to store and process PCEA data will adhere to industry standard best practices, including appropriate administrative, technical, and physical security measures, to protect against threats or hazards to the security or integrity of PCEA data and to protect against the unauthorized access, disclosure, alteration, use, encryption, corruption, destruction, and loss of PCEA data. Such measures will include industry standard and up-to-date security tools and technologies such as antivirus protections and intrusion detection methods designed to prevent all manner of breach including but not limited to hacking, phishing, and ransomware. PCEA data includes customer information, including that provided to Contractor by PG&E.

(b) Network Security. Contractor agrees at all times to maintain network security that (at a minimum) includes network firewall provisioning, intrusion detection, and regular vulnerability assessments. Contractor agrees to maintain network security that conforms to generally recognized industry standards and best practices.

(c) Application Security. Contractor agrees at all times to provide, maintain, and support its software and subsequent updates, upgrades, and bug fixes according to generally recognized industry standards and best practices such that the software is, and remains secure from known and reasonably anticipated vulnerabilities.

(d) Data Security. Contractor agrees to preserve the confidentiality, integrity, and accessibility of PCEA data with administrative, technical, and physical measures that conform to generally recognized industry standards and best practices. Maintenance of a data security includes but is not limited to the timely application of patches, fixes, and updates to operating systems and applications as provided by vendor or open source support.

(e) Data Storage. Contractor agrees that any and all PCEA data will be stored, processed, and maintained according to generally recognized industry standards and best practices.

(f) Data Transmission. Contractor agrees that any and all electronic transmission or exchange of system and application data with PCEA and/or any other parties expressly designated by PCEA shall take place via industry standard secure means.

(g) Data Encryption. Contractor agrees to store all PCEA backup data as part of its designated backup and recovery process in encrypted form, using a commercially supported encryption solution.

(h) Data Re-Use. Unless otherwise specifically authorized by PCEA by writing and in advance of such use, Contractor shall not use any PCEA data for any purpose other than those required or specifically permitted by the Agreement.

(j) Data Ownership. All PCEA data shall continue to be the property of and under the control of PCEA.

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(j) End of Agreement Data Handling. Contractor certifies that PCEA data shall not be retained or available to Contractor upon completion of the term of the Agreement. Within ninety days of completion of the term of the Agreement, unless this timeline is extended by mutual written agreement, PCEA data in the possession of Contractor shall be returned and/or destroyed. Where reasonably feasible, Contractor shall, upon request of PCEA, return all PCEA data to PCEA in a format acceptable to PCEA or if return is not feasible as determined by PCEA in advance written notice to Contractor, destroy any and all PCEA data within the timelines specified within this section.

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(k) Security Breach Notification to PCEA. Contractor shall report, orally and in writing, to PCEA any use, disclosure, and/or breach of PCEA data not authorized by this Agreement or otherwise authorized in writing by PCEA, including any reasonable belief that an unauthorized individual has accessed PCEA data and any episode within which PCEA data has been breached or subjected to a cyber-extortion threat. Contractor shall make the report to PCEA immediately upon discovery of the event, but in no case more than one (1) business day after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's notice shall identify the nature of the unauthorized use or disclosure, the data used, disclosed, or held for ransom, who made the unauthorized use or received the data if known, what Contractor has done to or shall do to mitigate any effect of the unauthorized use and/or breach, and what corrective action Contractor will take to prevent future similar unauthorized uses, disclosures, or breaches. Contractor shall provide such other information, including a written report, as reasonably requested by PCEA.

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(l) Security Breach Notification to Impacted Persons. Contractor agrees to comply with all applicable laws that require the notification of individuals, businesses, and entities, in the event of the unauthorized release, acquisition, or other event requiring notification. Contractor further agrees to assume full responsibility of informing such individuals, businesses, and/or entities of such events in accordance with applicable law. ~~(Need to review)~~

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24-20. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of PCEA, to:

Name/Title: David Silberman
Address: 400 County Center, Sixth Floor, Redwood City, CA 94063
Telephone: 650-363-4749
Email: DSilberman@smcgov.org

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In the case of Contractor, to:

Name/Title: Drake Welch – Vice President – Customer Care
Address: 401 West A Street, Suite 500, San Diego, CA 92101
Telephone: 619-684-8039
Email: dwelch@noblesolutions.com

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

Peninsula Clean Energy Authority

By: _____

President, Board of Directors, PCEA

Date: _____

ATTEST:

By: _____

Secretary of Said Board

Noble Americas Energy Solutions LLC.

By: _____

Contractor's Signature

Date: _____

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

1. Electronic Data Exchange Services:
 - a. Process CCA Service Requests (CCASRs) from/to PG&E which specify the changes to a customer's choice of services such as enrollment in CCA programs, customer initiated returns to bundled utility service or customer initiated returns to direct access service (814 Electronic Data Interchange Files).
 - b. Obtain all customer usage data from PG&E's Metered Data Management Agent (MDMA) server to allow for timely billing (according to PG&E requirements) of each customer (867 Electronic Data Interchange Files).
 - c. Maintain and communicate the amount to be billed by PG&E for services provided by PCEA (810 Electronic Data Interchange Files).
 - d. Receive and maintain all data related to payment transactions toward CCA charges from PG&E after payment is received by PG&E from customers (820 Electronic Data Interchange Files).
 - e. Process CCASRs with PG&E when customer status changes.
 - f. Participate in the Customer Data Acquisition Program (CDA) beta testing for SmartMeter data sharing as PCE's Data Manager.
2. Qualified Reporting Entity (QRE) Services:
 - a. Consistent with terms and conditions included in the Qualified Reporting Entity Services Agreement(s) between PCEA and Data Management Provider, serve as QRE for certain locally situated, small-scale renewable generators supplying electric energy to PCEA through its feed-in tariff (FIT).
 - b. Submit a monthly generation extract file to Western Renewable Energy Generation Information System (WREGIS) on PCEA's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
 - c. Receive applicable electric meter data from PG&E for PCEA FIT projects, consistent with PG&E's applicable meter servicing agreement, and provide such data to PCEA for purposes of performance tracking and invoice creation.
3. Customer Information System:
 - a. Establish an operational Customer Relationship Management System within 30 days of contract execution. Establish an operational Customer Information System within 60 days of contract execution.
 - b. Maintain an accurate database of all eligible accounts that are located in the PCEA service area and identify each account's enrollment status (opt out, program enrollment), rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer PCEA as mutually agreed to by parties from time to time.
 - c. Allow PCEA to have functional access to the online database to add customer interactions and other account notes.
 - d. Allow PCEA to view customer email or written letter correspondence within online database.
 - e. Maintain and provide as-needed historical usage data on all customers for a time period equal to the lesser of either (a) the start of customer service to present or (b) five years.
 - f. Until a cloud-based storage solutions for SmartMeter historical usage data is implemented, store SmartMeter historical usage data, as received by the MDMA, for a 48 hour window.
 - g. Maintain viewing access, available to appropriate PCEA staff, to view PG&E bills for PCEA customers, including supporting the intuitive parsing and labeling of PG&E provided files.

Maintain accessible archive of billing records for all PCEA customers from the start of PCEA Service or a period of no less than five years.

- h. Maintain and communicate as needed record of customers who have been offered service with PCEA but have elected to opt out, either before or after starting service with PCE.
- i. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.
- j. When requested by PCEA, place program charges on the relevant customer account, identified by Service Agreement ID (SAID).
- k. Identify customers participating in various PCEA programs in database.
- l. Include various program payment information in all relevant reports.
- m. Perform quarterly PCEA program reviews to assess appropriate customer charge level.
- n. Maintain all customer data according to PCEA's customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions including D.12-08-045, including a daily backup process.
- o. Maintain a Data Management Provider Security Breach Policy.

4. Customer Call Center:

- a. Provide professional Interactive Voice Response (IVR) recordings for CCA customer call center.
- b. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.
- c. Staff a call center, during any CCA Statutory Enrollment Period, 24 hours a day 7 days a week to process opt out requests.
- d. Staff a call center during Non-Enrollment Period between the hours of 8 AM and 5 PM PST Monday through Friday, excluding PCEA and PG&E holidays.
- e. Provide sufficient call center staffing to meet the requirements set forth herein, including designating PCEA specific agents to the extent needed to provide for full functionality and a customer call center supervisor that will serve as the main point of contact between PCEA and customer call center staff.
- f. Provide sufficient number of Data Manager Experts available to manage escalated calls between the hours of 8 AM and 5 PM PST Monday through Friday, excluding PCEA and PG&E holidays ("Regular Business Hours").
- g. Contractor will adhere to the following performance standards during Non-Enrollment Periods:
 - i. A minimum of ~~80~~75% of all calls will be answered within 20 seconds.
 - ii. A minimum of 98% of calls will be answered within 3 minutes.
 - iii. 100% of voicemail messages answered within one (1) business day.
 - iv. 100% of emails receive an immediate automated acknowledgement.
 - v. 95% of emails receive a customized response within one (1) business day.
 - vi. 100% of emails receive a customized response within three (3) business days.
 - vii. Achieve a no greater than ~~8~~10% abandon rate for all calls.

- h. Contractor will adhere to the following performance standards during Enrollment Periods:
 - i. A minimum of 75% of all calls will be answered within 60 seconds.
 - ii. A minimum of 90% of calls will be answered within 3 minutes.
 - iii. 100% of voicemail messages answered within one (1) business day.
 - iv. 100% of emails receive an immediate automated acknowledgement.
 - v. 95% of emails receive a customized response within one (1) business day.
 - vi. 100% of emails receive a customized response within three (3) business days.
 - vii. Achieve a no greater than 10% abandon rate for all calls.

- viii. Contractor shall provide monthly reports, which will demonstrate whether these performance standards have been met. It is acknowledged that the Contractor's failure to achieve substantial compliance with these standards will cause PCEA to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the PCEA of actual damages, including increased

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opt-out rates, reputational harm and general customer dissatisfaction, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages, the Contractor agrees that liquidated damages may be assessed and recovered by the PCEA as against Contractor, in the event of a failure to meet these performance standards and without the PCEA being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Contractor shall be liable to the Owner for payment of liquidated damages in the amount of Ten Thousand Dollars (\$10,000) for each month that Contractor fails to meet these performance standards. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to PCEA without limiting PCEA's right to terminate this agreement for default as provided elsewhere herein.

- h-j. Provide callers with the estimated hold time, if applicable. Provide an automated 'call back' option for callers who will be put on hold for an estimated five minutes or longer.
- j-k. Record all inbound calls and make recordings available to PCEA staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.
- k-l. Track call center contact quality with criteria including:
 - i. Use of appropriate greetings and other call center scripts
 - ii. Courtesy and professionalism
 - iii. Capturing key customer data
 - iv. Providing customers with correct and relevant information
 - v. First-contact resolution
 - vi. Accuracy in data entry and call coding
 - vii. Grammar and spelling in text communication (email and chat)
- l-m. Evaluate customer satisfaction through randomized voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.
- m-n. Receive calls from PCEA customers referred to Provider by PG&E and receive calls from PCEA customers choosing to contact Provider directly without referral from PG&E.
- n-o. Provide the call center number on PG&E invoice allowing PCEA customers to contact the call center. Collect and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.
- o-p. Collect permission (via voice recording, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.
- p-q. Respond to telephone inquiries from PCEA customers using a script developed and updated quarterly by PCEA. For questions not addressed within the script, refer inquiries either back to PG&E or to PCEA.
- q-r. Respond to customer inquiries within 24 hours, excluding weekends and holidays, including inquiries received either through telephone calls, email, fax or web-portal.
- r-s. Offer bi-annual cross training to PG&E call center in coordination with PCEA.
- s-t. Participate in coordinative meetings, at PCEA's request, to promote the resolution of any customer service issues. Such meetings may include PCEA's management/staff and may require on-site participation by contractor's management/staff.
- t-u. Provide monthly status reports during the first week of each month.
- u-v. Provide weekly status reports during Statutory Enrollment Periods.
- v-w. Use commercially reasonable efforts to make Spanish speaking call center staff available to customers during Regular Business Hours.
- w-x. Provide translation services for inbound calls for the following languages: Spanish, Cantonese, Mandarin, and Tagalog.
- x-y. Create and maintain online and downloadable forms for the PCEA website so that customers may perform program related tasks including, but not limited to, opt-up, opt-down, or opt-out from the Peninsula Clean Energy website. These program changes will be integrated into the Customer Relationship Management system during an hourly sync process.
- y-z. Host PCEA meetings with call center management and representatives on a bi-monthly basis.

5. Billing Administration:

- a. Maintain a table of rate schedules offered by PCEA to its customers.
- b. Send certain PCEA program charges for non-PCEA customers, when supported by PG&E, based on information provided to Provider by PCEA.
- c. Send certain PCEA program charges as a separate line item to PG&E for placement on monthly bill during term of repayment.
- d. Apply PG&E account usage for all PCEA customers against applicable rate to allow for customer billing.
- e. Review application of PCEA rates to PG&E accounts to ensure that the proper rates are applied to the accounts.
- f. Timely submit billing information for each customer to PG&E to meet PG&E's billing window.
- g. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.
- h. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CCA designated printer.
- i. Provide customer mailing list to PCEA designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
- j. Send a PCEA provided letter to customers that are overdue. If no payment is received from the customer after a certain amount of time, issue a CCASR to return customer to PG&E.

6. Settlement Quality Meter Data (SQMD):

- a. For each meter, receive either interval meter reads (usage per fifteen minutes) or a monthly read for scalar meters and SmartMeters. If a scalar meter or SmartMeter, apply the appropriate PG&E dynamic profiles to shape the usage, quantifying usage for each hourly interval.
- b. After hourly reads (fifteen minute interval reads are summed to the hourly interval) for each meter are quantified, loss adjust the usage, per meter and interval, with the appropriate PG&E dynamic loss factor based on voltage level of the account. If after performing quality control and working with PG&E to remedy missing or incorrect usage, there remains any missing reads or reads deemed inaccurate, estimate usage for the respective meter based on historical usage.
- c. Aggregate usage for all meters by hour and trade date and provide to Peninsula Clean Energy's designated Scheduling Coordinator or directly to CAISO for T+8 and T+48 submissions.
- d. Submissions for T+172B (Resettlement) are performed as needed per an agreed upon threshold and process between PCEA, designated Scheduling Coordinator, and contractor.
- e. PCEA agrees that Contractor shall have no responsibility for any charges or penalties assessed by the CAISO associated with the SQMD under an Indemnity or otherwise.
- f. Contractor shall prepare the SQMD using the same level of care that Contractor would use if preparing the SQMD for its own account as an LSE, however, Contractor hereby disclaims in advance that any representation is made or intended that the SQMD is necessarily complete, or free from error.

7. Reporting

Report	Frequency	Delivery Method
Aging	Weekly, Monthly	SFTP
Call Center Stats	Weekly, Monthly	Email
Cash Receipts	Weekly, Monthly	SFTP
PCEA Invoice Summary Reports	Monthly	SFTP
Day To Invoice	Weekly, Monthly	SFTP
100% Opt Up with Address	Weekly, Monthly	SFTP
Utility User Tax (UUT) Where Applicable	Monthly	Email

Invoice Summary Report	Weekly, Monthly	SFTP
Invoice Summary Report-Mid Month	Monthly	SFTP
Monthly Transaction Summary	Monthly	Email
Opt Out with Rate Class	Weekly, Monthly	SFTP
Retroactive Returns	Monthly	Email
Sent to Collections	Monthly	Email
Snapshot	Weekly	SFTP
Snapshot with Addresses	Weekly	SFTP
Unbilled Usage	Monthly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP

- i. Ensure monthly status reports are provided during the first week of each month.
- ii. Ensure weekly status reports are provided during all other enrollment periods.

8. Call Center Location

Any call center established for the purpose of answering baseload calls and all employees or agents providing call center services under this Agreement, will be physically located at all times within the nine county San Francisco Bay Area. Complex calls and call escalations may be routed to Data Manager experts located in San Diego. Overflow and after-hour support will be located in Northern California. And in no event, will any other services required by this Agreement be performed by employees or agents located outside of the United States.

9. Deliverables

Contractor understands that PCEA has a strict timeline for launch of its program. Attached as Attachment 1 to Exhibit A is a flow chart version of that timeline. Contractor is ready and able and agrees to perform the services under this Agreement in a manner that will allow PCEA to meet its timeline, which includes program launch (delivery of power to customers) in October 2016. As the parties agree that time is of the essence, both Contractor and PCEA understand that each has deliverables and dependencies on each other to meet the program launch date.s Contractor and agrees that a failure to perform services in a manner that allows PCEA to meet its timeline, unless such delay is caused by PCEA, shall constitute a material breach of this agreement.

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Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, PCEA shall pay Contractor based on the following fee schedule and terms:

Contractor's cost for the services listed in Exhibit A is \$1.15 per active meter per month. Travel and all start-up costs are included in this price. Contractor will not invoice PCEA nor will PCEA owe payments to Contractor no sooner than sixty (60) calendar days following the date on which the first PCEA customer meter becomes active.

In the event that PCEA elects to remove full call center services, the fee shall be reduced by \$0.15 per active meter per month.

The Fees defined in Exhibit B include only those service and items expressly set forth in Exhibit A of this Agreement. Unless otherwise agreed to by PCEA and the Contractor, the cost of additional deliverables provided by Contractor to PCEA shall be passed through directly to PCEA without mark-up using a labor rate of \$150.00 per hour.

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