Flexibility Services Provider Agreement

1. This Flexibility Services Provider Agreement (the “Agreement”) is entered into as of [\_\_\_\_\_\_\_\_\_\_\_], 20\_\_ (the “Effective Date”), between The United Illuminating (the “Company”) and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“Provider”), as one of the Company’s approved flexibility services providers (individually, a “Party” and collectively, the “Parties”).
2. RECITALS
3. WHEREAS, pursuant to the Innovative Energy Solutions (“IES”) program established by the Connecticut Public Utilities Regulatory Authority (“PURA”) under Docket No. 17-12-03RE05: *PURA* *Investigation into Distribution System Planning of the Electric Distribution Companies – Innovative Technology Applications and Programs*, the Company has entered into a pilot program with Piclo for the provision of Piclo Flex, an innovative, cloud-based independent marketplace that can be used to select and manage fleets of distributed energy resources, demand response and/or energy storage resources (individually and collectively, “Distributed Resources”) in a flexible manner to enhance grid reliability (the “Program”);
4. WHEREAS, the Company requires the provision of certain [INSERT TYPE OF DISTRIBUTED RESOURCES/SERVICES REQUESTED IN AUCTION] services (“Flexibility Services”) to aid in load management and reliability of its Distribution System (as defined below) and the Company wishes to contract with Provider for the provision of such Flexibility Services; and
5. WHEREAS, Provider is the owner and/or operator of certain Distributed Resources, or has entered into arrangements for rights in respect of third party owned Distributed Resources, that have the capability to provide Flexibility Services and wishes to make available to the Company such Flexibility Services in accordance with the terms and conditions of this Agreement.
6. NOW, THEREFORE, the Parties, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:
   1. Definitions
      1. In addition to terms defined in the Recitals hereto, the following terms shall have the meanings set forth below:

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| 1. **“Affiliate”** | 1. with respect to any Person, any other Person directly or indirectly Controlled by, Controlling, or under direct or indirect common Control with, such Persons; |
| 1. **“Applicable Law”** | 1. applicable federal, state, and local laws, statutes, ordinances, regulations, rules, codes, orders, constitutions, treaties, court rulings, administrative pronouncements, supervisory pronouncements, supervisory requirements, directives, circulars, publicly available opinions, publicly available interpretive letters, and any other official and legally binding release of any Governmental Entity, each as amended from time to time, of any applicable jurisdiction; |
| 1. **“****Availability”** or **“****Available”** | 1. means that the Flexibility Services are available to be delivered to the Company for the duration of the Service Window; |
| 1. **“Business Day”** | 1. any Day other than a Saturday or Sunday or a bank holiday in Hartford, Connecticut; |
| 1. **“Business Hours”** | 1. between 9:00 am and 5:00 pm on a Business Day; |
| 1. **“Change in Control”** | 1. means:    1. any sale, transfer or disposal of any legal, beneficial or equitable interest in fifty percent (50%) or more of the shares in the Provider (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or    2. any other arrangements that have or may have or which result in the same effect as (a) above; |
| 1. **“****Charge(s)”** | 1. the costs and/or fees set out in the Service Terms; |
| 1. **“****Confidential Information”** | 1. has the meaning given in Section 11 hereof; |
| 1. **“Control”** | 1. and its derivatives, such as “***Controlling***” and “***Controlled***,” means, with regard to any Person, the right or power to dictate the management of and otherwise control such Person by any of (i) holding directly or indirectly, or otherwise controlling, more than fifty percent (50%) of the voting rights of such Person, (ii) having the right to appoint or remove a majority of the members of the governing body of such Person, or (iii) having the power to direct or cause the direction of management of such Person; |
| 1. **“CTDPA”** | 1. has the meaning given in Section 11.2 hereof; |
| 1. **“Customer”** | 1. an electric customer of the Company; |
| 1. **“Data Protection Law”** | 1. any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Company, the Provider and/or the Flexibility Services, and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Governmental Entity; |
| 1. **“Day”** | 1. a calendar day; |
| 1. **“Defaulting Party”** | 1. has the meaning given in Section 6.1 hereof; |
| 1. **“Defect”** | 1. an issue that may arise with the Distributed Resource equipment, metering or the communication interface between the Company and Provider which results in non-delivery of Flexibility Services or a misinformed delivery of Flexibility Services; |
| 1. **“Development Plan”** | 1. the defined schedule of design, build and commissioning with regard to a Distributed Resource project in development; |
| 1. **“Distributed Resources”** | the distributed energy resources, electric storage and/or demand response resources used for the provision of the Flexibility Services as described in the Agreement; all asset types are eligible Distributed Resources, including but not limited to electric vehicles, smart thermostats, batteries, heat pumps, commercial and industrial load, and back-up power, however, greenhouse gas-emitting generation is not a Distributed Resource and cannot provide Flexibility Services; |
| 1. **“Distribution Limit”** | 1. $[\_\_\_\_\_\_\_\_\_] or such other amount as may be stated in the Service Terms; |
| 1. **“Distribution System”** | 1. the distribution system owned and/or operated by the Company; |
| 1. **“Event Start”** | 1. a notification by the Company to the Provider to deliver Flexibility Services during a Service Window. |
| 1. **“Force Majeure Event”** | 1. any event or circumstance which is beyond either the Company’s or the Provider’s (as the case may be) reasonable control and which results in or causes its failure to perform any of its obligations under the Agreement, provided that: (a) lack of funds; or (b) any failure or fault in the Distributed Resource shall not constitute a Force Majeure Event; |
| 1. **“Good Industry Practice”** | 1. the exercise of that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and carrying out services of similar nature, scope and complexity as the Flexibility Services, under the same or similar circumstances or the standard which would reasonably and ordinarily be expected from systems used by a skilled and experienced operator engaged in the same type of undertaking and carrying out services of similar nature, scope and complexity as the Flexibility Services, under the same or similar circumstances; |
| 1. **“Governmental Entity”** | any supra-national, national, federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction; |
| 1. **Indemnified Person** | has the meaning given in Section 9.1 hereof. |
| 1. **“Insolvency Event”** | 1. means any pre-insolvency, creditor protection, or insolvency related actions, events, processes or proceedings, whether in or out of court, including the following: any form of bankruptcy, liquidation, administration, receivership, voluntary arrangement, scheme of arrangement, restructuring plan or other compromise or arrangement or scheme with creditors, moratorium, stay or limitation of creditors’ rights, interim or provisional supervision by a court or court appointee, winding up, or other process levied or exercised; or any similar actions, events, processes or proceedings; |
| 1. **“Intellectual Property Rights”** | 1. all intellectual property, including patents, trademarks, service marks, domain names, business and trading names, styles, logos and get-ups, rights in goodwill, database rights and rights in data, rights in designs, copyrights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all inventions, rights in know-how, trade secrets and Confidential Information lists and other proprietary knowledge and information and all rights under licences and consents in relation to any such rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world for their full term, including any renewals and extensions; |
| 1. **“Interconnection Agreement”** | 1. an agreement governing the terms of interconnection of any Distributed Resource to the Company’s Distribution System; |
| 1. **“Material Adverse Effect”** | 1. any event or circumstance which, in the opinion of the Company:    1. is likely to materially and adversely affect the Provider’s ability to perform or otherwise comply with all or any of its obligations under this Agreement; or    2. is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Company; |
| 1. **“Performance Data”** | 1. such data relating to the performance of the Distributed Resource as may be provided by the Parties to each other from time to time; |
| 1. **“Personal Data”** | 1. has the meaning given to it in Data Protection Law; |
| 1. **“Persons”** | 1. an individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, limited liability partnership, joint venture, estate, trust, unincorporated organization, association, organization or other entity or form of business enterprise or Governmental Entity; |
| 1. **“Service Failure”** | 1. has the meaning given in Section 7.1 hereof; |
| 1. **“Service Glossary”** | 1. any glossary of terms within the Service Terms as applicable to a particular Flexibility Service; |
| 1. **“****Service Requirements”** | 1. the specification that the Flexibility Services must be capable of meeting, as defined in the Service Terms; |
| 1. **“Service Terms”** | 1. the service terms applicable to the provision of Flexibility Services which form part of the Agreement, as set forth in Exhibit A attached hereto; |
| 1. **“Service Window”** | 1. the time periods during the Service Period during which the Provider agrees to make Available, and provide in accordance with the Agreement, the Flexibility Services to the Company, as defined in the Service Terms (if applicable); |
| 1. **“****Site”** | 1. sites which are detailed in the Service Terms; |
| 1. **“****Term”** | 1. the duration of the Agreement as specified by the Company in the Service Terms; |
| 1. **“Terminating Party”** | 1. has the meaning given in Section 6.1 hereof; |
| 1. **“Termination Notice”** | 1. has the meaning given in Section 6.2 hereof; |
| 1. **“****Unavailability”** (or **“Unavailable”**) | 1. the Flexibility Services, in accordance with the Service Requirements, are not Available to be delivered to the Company |

* 1. Provider’s Obligations
     1. Provider will:
        1. ensure or procure the Availability of the Distributed Resources and perform the Flexibility Services in compliance with the terms of the Agreement and all Applicable Laws and Good Industry Practice;
        2. ensure that all technical, communication and data provision requirements set out in the Agreement are complied with at all times;
        3. act diligently and in good faith in all of its dealings with the Company;
        4. ensure that Provider is available on reasonable notice to provide such assistance or information as the Company may reasonably require in connection with the Flexibility Services;
        5. at the request of the Company, make available to the Company information related to the metering equipment of the Distributed Resource;
        6. remedy any Defect of the Flexibility Services in accordance with Good Industry Practice and to the satisfaction of the Company;
        7. fully comply with the Company’s requirements, procedures and policies, including those related to safety, security, environmental practices and access authorization, currently in effect, at the Site(s) providing the Flexibility Services; and
        8. disclose the existence of any agreement or arrangement Provider may have with regard to the Distributed Resources that provides Flexibility Services under the Agreement that could reasonably impact Availability of the Distributed Resource or the ability of Provider to perform its obligations under the Agreement.
  2. Record and Audits
     1. Provider shall keep proper and accurate records of all matters relating to the performance of its obligations under the Agreement.
     2. The records shall be maintained in a form suitable for audit purposes and shall be retained for any period required by any Applicable Law, and in any event, for the Term of the Agreement and for a period of no less than seven (7) years after expiration or termination of the Agreement.
     3. The Company, or a reputable independent third-party auditor nominated by it, may, on reasonable notice, and in any event on not less than five (5) Business Days’ notice (or such other period as may be specified in the Service Terms) to Provider and during normal working hours, inspect and review the records for the purposes of verifying Provider’s compliance with its obligations under the Agreement and/or to meet any other audit or information requirement that may be required by Applicable Law and/or any regulatory body, including the Authority.
     4. Provider shall cooperate fully and promptly with any such audit and/or inspection conducted by the Company and provide such reasonable assistance as may be required by the Company in relation to any audit.
     5. Provider shall ensure that all paperwork issued by or on behalf of Provider to the Company (including, without limitation, invoices, correspondence and delivery notes), is complete, accurate and clearly references any other appropriate and necessary information.
  3. Representations and Warranties
     1. Without prejudice to its other obligations under and/or pursuant to the Agreement, each Party represents and warrants to the other Party at all times that:
        1. it is a duly incorporated company validly existing under the law of its jurisdiction of incorporation;
        2. it has the right, power, capacity and authority to enter into and perform its obligations under the Agreement;
        3. the entry into and performance by it of the Agreement does not and will not contravene or conflict with any Applicable Law or judicial or official order applicable to it;
        4. it will not be in material breach of any other agreement or arrangement of whatever nature with any person which could or may affect the performance of its obligations under the Agreement;
        5. all information it provides to the other Party will be complete and accurate save to the extent disclosed;
        6. no Insolvency Event is continuing or might reasonably be anticipated; and
        7. no litigation, arbitration or administrative proceedings are taking place, pending, or to the Party’s knowledge threatened against it, any of its directors or any of its assets, which, if adversely determined might reasonably be expected to have a Material Adverse Effect.
     2. Without prejudice to its other obligations under and/or pursuant to the Agreement and in addition to the foregoing, Provider represents and warrants to the Company at all times that:
        1. the Distributed Resource contracted to provide the Flexibility Services has, as applicable, either:
           1. connection(s) to the Company’s Distribution System and an executed Interconnection Agreement(s); or
           2. certainty that the necessary connection(s) can be completed and an Interconnection Agreement entered into in time to meet the Service Requirements as specified in the Service Terms;
        2. it has obtained and maintains in force for the Term, either directly or through agreement via its aggregated distributed energy resources, all licenses, authorizations, consents and permits needed to supply the Flexibility Services in accordance with the terms of the Agreement;
        3. it shall disclose as soon as reasonably possible any change of circumstances which could affect the delivery of the Flexibility Services;
        4. where applicable, for each Distributed Resource in development, Provider has (or has procured), and, if requested, will promptly provide to the Company a copy of the Development Plan for each Distributed Resource;
        5. where applicable, Provider shall take all reasonable steps to achieve, or procure, the commissioning of each Distributed Resource project on time and in accordance with the relevant Development Plan; and
        6. if, at any time during the Term, the provision of Flexibility Services would cause Provider to be in breach or non-compliance as described in Sections 5.1.3 and 5.2.11, Provider will not accept or comply with any Event Start notification and will provide notification to the Company as soon as practicable.
  4. Charges and Payments
     1. All Charges and other sums payable under the Agreement shall be paid in accordance with the Service Terms.
  5. Termination
     1. Termination for Cause. Either Party (“**Terminating Party**”) may immediately terminate the Agreement upon written notice to the other Party (“**Defaulting Party**”), without any liability being owed to the Defaulting Party, if at any time during the Term of the Agreement:
        1. the Defaulting Party is in material breach of the Agreement and such breach has not been cured within fifteen (15) Days; and
        2. an Insolvency Event occurs in relation to the Defaulting Party.
     2. Termination for Convenience. The Company may at any time, for its own convenience, and at its sole and exclusive discretion, upon no less than thirty (30) Days prior written notice (“**Termination Notice**”) to Provider, terminate the Agreement.
     3. Survival. This Section and the following provisions of the Agreement shall survive termination or expiration of the Agreement: Section 3 (*Records and Audit*); Section 5 (*Charges and Payment*); Section 6 (*Termination*); Section 7 (*Service Failure*); Section 9 (*Liability, Indemnity and Insurance*); Section 11 (*Confidentiality*); Section 12 (*Intellectual Property Rights*); Section 13(*Data Protection*); Section 16 (*Dispute Resolution*); Section 21 (*Waiver*); Section 25 (*Governing Law and Jurisdiction*); and any other provision of the Agreement that expressly or by implication is intended to come into, or continue in force, on or after termination or expiry of the Agreement.
     4. Following termination or expiration of the Agreement, Provider shall promptly at Provider’s cost, submit to the Company within thirty (30) Business Days all invoices with supporting documents for payment of all outstanding Charges in connection with the provision of the Flexibility Services.
     5. Where the Company terminates the Agreement as a result of a material breach by Provider pursuant to Section 6.1.1, the Company may recover from Provider any and all costs, losses and expenses reasonably incurred by the Company as a result of such termination, including where relevant such costs, losses and expenses associated with selecting a replacement Provider. Such costs, losses and expenses shall be payable by Provider to the Company provided that the liability of Provider in respect of this Section 6.5 shall not exceed the Distribution Limit.
     6. The Parties agree that any costs, losses and expenses incurred by the Company pursuant to Section 6.5 shall be deemed direct losses and costs of the Company and accordingly not be subject to Section 9.3.
  6. Service Failure
     1. Notwithstanding its obligations under Section 7.2, Provider shall notify the Company as soon as reasonably practicable upon becoming aware of the inability of Provider to provide the Flexibility Services in all or any part of any contracted Service Window (if applicable) as set out in the Service Terms (“**Service Failure**”).
     2. In the event of a Service Failure by Provider, the Company may require Provider to:
        1. provide the Company with a written explanation as to the cause of the failure of service delivery;
        2. implement a plan for improving performance and/or reducing the number of occurrences of Unavailability, which may include at the Company’s discretion, a repeat of any commissioning tests undertaken on initial installation and commissioning of the Distributed Resource;
        3. amend the Service Requirements as specified in the Service Terms; or
        4. take any other action agreeable to the Company in order to alleviate such Service Failure.
     3. In the event that:
        1. Provider fails to comply with the terms of Section 7.2;
        2. Provider’s proposals are not accepted by the Company;
        3. the Parties fail to reach agreement on any actions; or
        4. Provider’s performance with regard to such Service Failure does not significantly improve within fifteen (15) Days of the date of the notice,

such failure will be deemed a material breach of the Agreement for the purposes of Section 6.1.1 of this Agreement and Section 6.5 shall apply.

* 1. Force Majeure
     1. A Party shall not be in breach or default of the Agreement to the extent that it is prevented from performing any of its obligations under the Agreement as a result of a Force Majeure Event, for so long as the Force Majeure Event continues to prevent such performance.
     2. If a Force Majeure Event occurs, the following process will apply:
        1. the affected Party will notify the other Party as soon as reasonably practicable of:
           1. the occurrence and description of the Force Majeure Event;
           2. the date on which the Force Majeure Event commenced and its likely duration (if known); and
           3. the effect of the Force Majeure Event on the Party’s ability to perform its obligations under the Agreement;
        2. as soon as is reasonably practicable following notification pursuant to Section 8.2.1, the Parties shall meet to discuss how best to continue their respective obligations under the Agreement; and
        3. the affected Party will use reasonable endeavours to mitigate the impact of the Force Majeure Event on its ability to perform its obligations under the Agreement.
     3. For the avoidance of doubt the non-performance of either Party's obligations under the Agreement arising prior to the Force Majeure Event, shall not be excused as a result of the Force Majeure Event.
     4. If a Force Majeure Event prevents, hinders or delays a Party in performing its obligations under the Agreement for a continuous period of at least sixty (60) Days, either Party may terminate the Agreement with immediate effect.
  2. Liability, Indemnity and Insurance
     1. Indemnification by Provider. To the fullest extent permitted by law, Provider shall be responsible for and shall indemnify, and shall defend and save the Company, its affiliates and their respective employees, trustees, shareholders, officers, and directors, as well as their respective agents and consultants (each, an "**Indemnified Person**") harmless from and against any and all costs and expenses (including all costs and expenses of litigation, as well as related attorneys' fees), losses, liabilities, fines, penalties, damages, claims, demands, judgments, awards, obligations, actions, or proceedings arising from the acts or omissions of Provider or related to the Flexibility Services or Provider's obligations under the Agreement. Provider further agrees to obtain, and maintain at its expense, such insurance as will insure the provisions of all indemnity obligations in the Agreement.
     2. Limitation of Liability. PROVIDER'S LIABILITY TO THE COMPANY UNDER THIS AGREEMENT, WHETHER BASED UPON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, TORT, AGREEMENT, STRICT LIABILITY, OR OTHERWISE SHALL BE (i) FOR WARRANTY AND INDEMNITY OBLIGATIONS, THE REMEDIES SET FORTH IN THIS AGREEMENT, (ii) FOR DAMAGES PROVIDER IS REQUIRED TO INSURE AGAINST, ANY RECOVERY AVAILABLE UNDER THE INSURANCE COVERAGES REQUIRED HEREUNDER, (iii) FOR ANY ADDITIONAL DIRECT DAMAGES TO THE COMPANY, AN AMOUNT EQUAL TO THE TOTAL OF ALL CHARGES PAID BY THE COMPANY TO PROVIDER UNDER THIS AGREEMENT. THE COMPANY’S AGGREGATE LIABILITY TO PROVIDER UNDER THIS AGREEMENT SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES WHATSOEVER, THAT PORTION OF THE CHARGES DUE HEREUNDER THAT HAVE NOT YET BEEN PAID BY THE COMPANY WITH RESPECT TO THE FLEXIBILITY SERVICES.
     3. Except to the extent allowed under the insurance and warranty provisions of this Agreement, neither Party shall be liable to the other Party for any indirect, incidental, punitive or consequential damages.
     4. PROVIDER WAIVES ALL CLAIMS AGAINST THE COMPANY FOR ANY LIABILITY OR LOSS IN CONNECTION WITH: (i) PAYMENT OF ALL FEDERAL, STATE AND LOCAL TAXES OR CONTRIBUTIONS IMPOSED OR REQUIRED UNDER UNEMPLOYMENT INSURANCE, SOCIAL SECURITY AND INCOME TAX LAWS WITH RESPECT TO CONTRACTOR'S WORK UNDER THE CONTRACT; (ii) ALL LOSSES IN CONNECTION WITH ANY CLAIMS FOR LOST WAGES, SEVERANCE PAY, PENSIONS OR OTHER BENEFITS WITH RESPECT TO PROVIDER'S WORK UNDER THIS AGREEMENT; AND (iii) ALL CLAIMS FOR LIABILITY FOR DAMAGE TO PROVIDER’S PERSONAL PROPERTY OR INJURY TO PROVIDER RESOURCES IN CONNECTION WITH THIS AGREEMENT
     5. Provider shall maintain or cause to be maintained sufficient insurance coverages as shall be necessary to insure Provider and its employees, agents, representatives and subcontractors against any and all claims or claims for damages arising under this Agreement, including those amounts necessary to indemnify the Company pursuant to this Section 9, and such insurance coverages shall apply to all Flexibility Services provided by Provider or its employees, agents, representatives or subcontractors.
     6. Provider’s liabilities under the Agreement shall not be limited by the amount of insurance coverage required or made available.
  3. Assignment, Subcontracting and Change in Control
     1. Assignment. The Agreement shall be binding upon the Parties and their respective successors and permitted assigns. The Company may assign this Agreement to any affiliate of the Company. Provider is not authorized to and shall not directly or indirectly (through an equity sale, merger or other transaction) sell, assign or otherwise transfer the Agreement, in whole or in part, or any of the work to be performed hereunder, without the prior written consent of the Company, which may be granted or withheld in the Company’s sole discretion. Without waiving any rights and remedies the Company may have against Provider, upon discovering that Provider has purported to sell, assign or otherwise transfer, in whole or in part, the Agreement or any of the work to be performed, without the Company’s prior written consent, the Company may, at its sole option and in its sole discretion, deem such action to be binding and enforceable against such assignee, successor, or transferee, or may deem such action to be null, void, and of no force or effect.
     2. Subcontracting.
        1. Provider shall provide the Company with notice of any Flexibility Services that it desires to subcontract along with a list of proposed subcontractors. The Company shall have the right to refuse any proposed subcontractor and Provider shall not enter into any such subcontract with any such subcontractor as to which the Company has objected. Provider shall not make any substitution of proposed subcontractors prior to or during the term of this Agreement without prior written approval from the Company. Neither Provider nor any subcontractor shall assign any work under this Agreement without the written consent of the Company.
        2. Irrespective of the Company’s consent or the terms of any agreement between Provider and any subcontractor, Provider shall (a) be fully responsible to the Company for acts and omissions of subcontractors; (b) remain fully responsible for the full and faithful performance of the Agreement; (c) direct and control the activities of all subcontractors; (d) remain fully bound by all terms and conditions of the Agreement including all requirements for indemnity and warranty. Provider shall include all Agreement provisions related to any subcontracted work in the written agreement between Provider and such subcontractor for such work, including warranty, insurance, audit and indemnity provisions. Provider shall be responsible for the satisfaction of all contractual and legal obligations to such subcontractor.
        3. Nothing contained in the Agreement documents shall create any direct contractual relation between any subcontractor and the Company.
     3. If ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Site changes, or may change, during the Term, Provider shall immediately notify the Company of the same. The Company and Provider shall if required, and at the reasonable request of the Company, discuss the implications of the change and the options available to minimise any disruption that may be caused by such change.
     4. The Company reserves the right to terminate the Agreement in accordance with Section 6 if a Change in Control of Provider occurs and the new owner of Provider fails to meet any of the Company’s reasonable requirements, in the Company’s sole determination.
  4. Confidentiality
     1. “**Confidential Information**” means any information disclosed by or on behalf of one Party to the other Party under or in connection with this Agreement at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as “confidential” or should have been understood by the other Party acting reasonably to be confidential, including information containing personal information, personal financial information, employee or Customer information, personally identifiable information, protected health information, proprietary information, business plans, marketing strategies, bidding activities, commercial, technical and performance information, contracts, financial information, research documentation, and information considered by either Party to be a trade secret and/or of a commercially valuable and sensitive nature or information that may otherwise be deemed confidential by law or regulatory agency.
     2. Each Party acknowledges that it may be necessary to disclose Confidential Information to the other Party. Except to the extent set forth in this Section 11, or as otherwise agreed to in writing by the Parties, each Party shall maintain the Confidential Information of the other Party in a secure and confidential manner. The Parties agree to use Confidential Information solely to the extent necessary to provide the Flexibility Services for the Term of the Agreement and to make Confidential Information available to its employees and advisors on a need-to-know basis only, and to not disclose to third parties, except for PURA, or to publish any of the Confidential Information without the other Party’s advance written consent. The Parties agree to comply with all other applicable state, federal and local laws, regulations, codes and policies regarding the protection of Confidential Information, and the avoidance of theft or fraud through the improper use or disclosure of such information, including, without limitation, the Connecticut Consumer Data Privacy Act, Public Act No. 22-15, C.G.S., Ch. 743jj, effective July 1, 2023 (“**CTDPA**”), and the regulations promulgated thereunder.
     3. Any information transmitted to either Party will not be deemed Confidential Information if that information is: (a) in the receiving party's possession without restriction on disclosure prior to disclosure hereunder; (b) at the time of disclosure, generally available to the public without restriction on disclosure; (c) after disclosure, generally available to the public without restriction on disclosure, by publication or otherwise, through no fault of the receiving party; (d) after the time of disclosure, received from a third party who imposes no obligation of confidentiality and who, insofar as the receiving party can reasonably determine, did not acquire any such Confidential Information directly or indirectly from the other party subject to requirements of confidentiality or (e) if such party independently discovers or develops such information).
     4. Each Party shall notify the other Party as soon as possible in writing if any Confidential Information provided to the other Party has been changed to non-proprietary status.
     5. The Company may demand the return and/or disposal of its Confidential Information at any time upon providing written notice to Provider, provided that such request shall not interfere with the performance of this Agreement, unless the Company has notified Provider of its intent to terminate this Agreement. Within fifteen (15) days of receipt of such notice, Provider shall return all of the original Confidential Information and shall dispose of all copies, reproductions or extracts (both written and electronic) in its possession and in the possession of any representatives to whom it was disclosed using methods authorized by the National Association for Information Destruction for the media on which the Confidential Information is stored. Except as may otherwise be agreed upon by the Parties in writing, Provider shall provide the Company with written certification of the return and/or disposal of such Confidential Information promptly following the return or disposal of such Confidential Information. Upon the termination or expiration of this Agreement, Provider may demand the return and/or disposal of its Confidential Information in accordance with similar terms and conditions.
     6. The provisions of this Section shall survive the termination of the Agreement and shall bind the Parties and their successors and assigns.
  5. Intellectual Property Rights
     1. The Agreement does not transfer any interest in Intellectual Property Rights. Provider hereby grants the Company a license to use all Intellectual Property Rights associated with the Flexibility Services free of additional charge and on a non-exclusive, non-transferable and non-sublicensable basis for the purpose of this Agreement.
  6. Data Protection
     1. Each Party shall, at its own expense, ensure that it complies with all applicable Data Protection Law and, to the extent Provider processes any personal data of Customers of the Company, Provider agrees as follows:
        1. Limited Use of Personal Information. At all times during the term of the Agreement, Provider shall collect, access, use, disclose, process or retain Personal Data solely for the purpose of rendering the contracted services to the Company and not for any other purpose. In no event shall Provider sell any Personal Data to any third party. Provider shall not share or otherwise disclose any Personal Data to any third party except as is necessary to provide services to the Company and provided the Company has been notified and has consented in writing to such disclosure.
        2. Assistance by Provider. Provider shall adhere to the Company’s written instructions pursuant to the Agreement and shall assist the Company in meeting the Company's obligations under the CTDPA. Such assistance should include: 1) assisting the Company in fulfilling the Company’s obligation to respond to consumer rights requests; 2) assisting the Company in meeting the Company's obligations in relation to the security of processing the personal data and in relation to the notification of a breach of security, as defined in section 36a-701b of the Connecticut General Statutes, of Provider’s system, in order to meet the Company's obligations; and 3) providing necessary information to enable the Company to conduct and document data protection assessments.
        3. This Agreement governs Provider’s data processing procedures with respect to processing performed on behalf of the Company.
        4. Provider Obligations. Provider shall: 1) ensure that each person processing the Company’s personal data is subject to a duty of confidentiality with respect to the data; (2) at the Company's direction, delete or return all personal data to the Company as requested at the end of the provision of services, unless retention of the personal data is required by law; (3) upon the reasonable request of the Company, make available to the Company all information in its possession necessary to demonstrate Provider's compliance with the obligations of the CTDPA; (4) after providing the Company an opportunity to object, engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the obligations of Provider with respect to the personal data; and (5) allow, and cooperate with, reasonable assessments by the Company or the Company’s designated assessor, at the Company’s expense, or Provider may arrange for a qualified and independent assessor to conduct an assessment of Provider's policies and technical and organizational measures in support of the obligations of the CTDPA, using an appropriate and accepted control standard or framework and assessment procedure for such assessments. Provider shall provide a report of such assessment to the Company upon request.
        5. Nothing in this Agreement shall be construed to relieve either Party from the liabilities imposed on either Party by virtue of the Company's or Provider's role in the processing relationship, as described in the CTDPA.
        6. Controller and Processor Relationships. The Parties acknowledge and agree that determining whether either Party are acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal data is to be processed. If Provider is not limited in processing personal data pursuant to the Company’s instructions, or if Provider fails to adhere to such instructions, Provider acknowledges and agrees that Provider is a controller and not a processor with respect to a specific processing of data. If Provider continues to adhere to the Company’s instructions with respect to a specific processing of personal data, then Provider shall remain a processor. If Provider begins, alone or jointly with others, determining the purposes and means of the processing of personal data, Provider is a controller with respect to such processing and may be subject to an enforcement action under the CTDPA.
  7. Warranties
     1. Services Warranty. Provider warrants that any Flexibility Services performed or provided by, through, or on behalf of Provider as part of or in connection with the Agreement shall (i) be performed by Provider or Provider’s subcontractors who are fully qualified and competent and whose recommendations, guidance and performance reflect professional knowledge, judgment, and performance in accordance with the highest professional standards applicable to the utility industry and the industry applicable to such Flexibility Services; and (ii) comply with and conform to all provisions and requirements of the Agreement and to any and all provisions of any and all applicable laws.
     2. Supplier Warranties. Provider shall take all reasonable steps to transfer for the benefit of the Company all warranties or guarantees available from the suppliers of any portion of the Flexibility Services, as applicable.
     3. Information Warranty. Provider warrants that it has the full legal right, title and ownership of information furnished pursuant to this Agreement.
     4. Completion Warranty. Provider warrants that it shall provide the Flexibility Services in accordance with the Service Period. If the Flexibility Services are delayed due to causes attributable to Provider or Provider’s subcontractors, Provider shall, at its sole cost and expense, use its best efforts to restore the Flexibility Services to schedule.
     5. Subcontractor Warranties. If applicable, Provider shall obtain usual and customary warranties from subcontractors. Such warranties shall be obtained for the benefit of the Company, as well as for Provider. Provider shall ensure that the benefit of any warranty offered by any subcontractor at any tier is passed through to the Company, shall provide a copy of the terms of any such subcontractor warranty to the Company, and shall identify relevant subcontractor contracts and otherwise actively assist the Company, as required or desired by the Company and without additional charge, in enforcing any such warranty in the event such enforcement should become necessary. The existence and/or absence of any subcontractor warranties, including compliance or noncompliance therewith, shall not affect or impair in any manner whatsoever Provider’s obligations to the Company hereunder.
  8. Notices
     1. Unless otherwise specified in the Service Terms, all notices shall be submitted in accordance with the processes, and to the relevant addresses, set forth below:

To the Company: The United Illuminating Company

Attn: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

100 Marsh Hill Road

Orange, CT 06477

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

With a copy to: General Counsel

UIL Holdings Corporation

180 Marsh Hill Road

Orange, CT 06477

To Provider: [NAME]

Attn: [\_\_\_\_\_\_\_\_\_\_\_\_]

[ADDRESS]

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

* + 1. All notices required under this Agreement shall be in writing and shall be deemed to be given when received upon personal delivery, or if mailed, as of the date indicated on the receipt document provided by the mail carrier, at the address of such individual set forth above, unless otherwise indicated in the Service Terms.
  1. Dispute Resolution
     1. Negotiation Between Executives. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to the Agreement, including the breach, termination or validity thereof, and/or the Flexibility Services, promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within fifteen (15) days after delivery of the notice, the receiving Party shall respond with: (i) a statement of that Party's position and a summary of arguments supporting that position; and (ii) the name and title of the executive who will represent that Party and of any other Person who will accompany the executive. Within thirty (30) days after delivery of the initial notice, the designated executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this Section 16 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable law and rules of evidence.
     2. Mediation. If the dispute has not been resolved by negotiation within forty-five (45) days after the disputing Party's initial notice under Section 16.1, or if the Parties failed to meet within thirty (30) days after receipt of such notice, each as contemplated in Section 16.1, the Parties shall endeavour to settle the dispute by mediation under the then current CPR Mediation Procedure; *provided*, *however*, that if one Party fails to participate as provided in Section 16.1, the other Party may thereupon initiate mediation prior to the expiration of the forty-five (45) day period. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.
     3. Arbitration. Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, and/or the Flexibility Services, that has not been resolved by a non-binding procedure as provided in Section 16.1 or Section 16.2 within ninety (90) days after the disputing Party's initial notice under Section 16.1, shall be finally resolved by arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration by a sole arbitrator, for disputes involving amounts in the aggregate under Three Million Dollars ($3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than Three Million Dollars ($3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in CPR Rule 5.4, with the third arbitrator selected pursuant to CPR Rules 5 and 6; *provided*, *however*, that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Hartford, Connecticut.
     4. Powers of Arbitrator(s). Except to the extent provided in Section 9.2, the arbitrator(s) are not empowered to award damages in excess of compensatory damages (which compensatory damages include liquidated damages, if applicable, as specified in the Services Term) and each Party expressly waives and foregoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner. All costs of the arbitration shall be paid equally by the Parties, unless the award shall specify a different division of the costs. Each Party shall be responsible for its own expenses, including attorneys' fees. Both Parties shall be afforded adequate opportunity to present information in support of its position on the dispute being arbitrated. The arbitrator may also request additional information from the Parties.
     5. Deferral. The Parties may agree to defer such arbitration proceeding, without prejudice to the Indemnified Person(s), pending the resolution of any particular claim disputed by Provider.
     6. Continued Performance. Unless otherwise directed in writing by the Company, Provider shall continue performance of all Flexibility Services in conformance with the requirements of this Agreement notwithstanding the existence of any claim, dispute and/or proceeding between the Parties. Nothing herein shall prejudice, impair or otherwise prevent the Company from receiving equitable relief, including an order for specific performance and/or an injunction, from an appropriate governmental authority pending the conclusion of any mediation and/or arbitration proceeding.
     7. Compelled Arbitration. Each Party will proceed in good faith to conclude the arbitration proceeding as quickly as reasonably possible. If a Party refuses to participate in an arbitration proceeding, the other Party may petition any governmental authority having proper jurisdiction for an order directing the refusing Party to participate in the arbitration proceeding. All costs and expenses incurred by the petitioning Party in enforcing such participation shall be paid for by the refusing Party.
     8. Related Parties and Proceedings.
        1. The Company shall have the right, but not the obligation, to join or otherwise require others (including any subcontractor) to participate as parties and/or witnesses, in the sole and exclusive discretion of the Company, in any dispute resolution proceeding hereunder (including any negotiation between executives, mediation and/or arbitration). If the Company, in its sole and exclusive discretion, exercises such right, then such additional party and/or parties shall be an equal participant in, and subject to all rules and requirements of, such proceeding; *provided* that if such additional participation involves an arbitration proceeding for disputes involving amounts in the aggregate equal to or greater than Three Million Dollars ($3,000,000), then the Company shall appoint one of the three arbitrators, and one arbitrator shall be jointly appointed by Provider and all of such additional parties, in each case pursuant to the screened procedure referenced in Section 16.3.
        2. The Company shall have the right, but not the obligation, to require Provider to join or otherwise participate as a party and/or witness, in the sole and exclusive discretion of the Company, in any dispute resolution proceeding (including any negotiation between executives, mediation and/or arbitration) involving the Flexibility Services. If the Company, in its sole discretion, exercises such right, then Provider shall act in good faith, coordinate and cooperate with the Company and the other parties to the proceeding, and otherwise proceed as though such proceeding involved a dispute under this Agreement. Provider hereby consents to being so joined and waives and releases, to the fullest extent permitted by applicable law, any objection, right or other claim that Provider cannot be compelled or otherwise has no obligation to participate in any such proceeding. Provider shall solely bear all costs and expenses incurred in connection with such participation.
        3. If Provider refuses to comply with this Section 16.8 in whole or in part, the Company may petition any governmental authority having proper jurisdiction for an order directing Provider to so comply. All costs and expenses incurred by the Company in enforcing such participation will be paid by Provider.
     9. Subcontractors. Without limiting the provisions of Section 10.2, Provider shall incorporate and require the incorporation of the provisions of this Section 16, specifically referencing the Company’s right under Section 16.8.1 and subcontractor's obligations under this Section 16.9, into all agreements with subcontractors. Without limiting the provisions hereof, each subcontractor shall (a) consent to being joined as a party and/or a witness in any dispute resolution proceeding under this Section 16 and/or related hereto; and (b) waive and release, to the fullest extent permitted by applicable law, any objection, right or other claim that such subcontractor cannot be compelled or otherwise has no obligation to participate in any such proceeding, as a party, witness or otherwise. If a subcontractor refuses to comply with this Section 16 in whole or in part, the Company may petition any governmental authority having proper jurisdiction for an order directing such subcontractor to so comply. All costs and expenses incurred by the Company in enforcing such participation will be paid by Provider.
  2. Name and Logo Use
     1. Unless authorized in writing by the Company or except as required by Applicable Law, the Parties shall not engage in any advertising, publicity or other promotional activity which directly or indirectly mentions or refers to the relationship between the Parties or the Flexibility Services furnished under this Agreement.
  3. Severance
     1. If any provision of the Agreement becomes or is declared invalid, unenforceable or illegal by a judicial or other competent authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the Agreement, which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.
     2. The Company and Provider each acknowledge that it has entered into the Agreement on an arm’s length basis and that it has taken independent legal advice in so doing.
  4. Third Party Rights
     1. Except as provided in any consent to assignment of this Agreement, nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to this Agreement.
  5. No Agency or Partnership
     1. Nothing in the Agreement shall be deemed to constitute a partnership or joint venture or contract of employment between the Parties nor constitute either Party the agent of the other.
     2. Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other’s behalf, including but not limited to the making of any representations or warranty and the exercise of any right or power.
  6. Waiver
     1. The waiver by any Party of a breach of and/or other non-compliance with any provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach or non-compliance.
  7. Entire Agreement
     1. The Agreement shall constitute the complete agreement between the Parties. All prior communications, whether oral or written, shall be superseded by the Agreement and shall not bind the Parties. No change to the Agreement shall be binding upon the Parties unless made in writing and signed by both Parties.
  8. Counterparts
     1. Any number of counterparts of this Agreement may be executed, and each shall have the same force and effect as an original. Facsimile signatures hereon or on any notice or other instrument delivered under this Agreement shall have the same force and effect as original signatures.
  9. Compliance with Laws
     1. Provider and subcontractors shall comply with all Applicable Laws, including international, federal, state and local laws, and the laws applicable to any location where the Flexibility Services are being provided or delivered. Such compliance shall include environmental, human rights, labour, employment, non-discrimination and anti-corruption laws (including the Foreign Corrupt Practices Act), and all applicable maritime, customs, export, and import laws, requirements, rules and regulations, and the applicable laws, requirements, rules and regulations of the country of origin or destination, any intermediate country, and the United States in the performance of the Flexibility Services. The country of any location where the Flexibility Services are to be provided and delivered, whether it is the country of origin or destination or any intermediate country must be a member of the International Labour Organization. The costs of such compliance with the foregoing requirements shall be borne exclusively by Provider and Provider shall defend, indemnify, and hold the Company harmless from any liabilities, damages, fines, penalties and costs arising from Provider’s noncompliance with this Section.
  10. Governing Law and Jurisdiction
      1. The Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Connecticut, without regard to its principles of conflicts of law provided that if the Site is located entirely outside of the State of Connecticut, then the Law of the State/Commonwealth where the Site is located (and where the work is performed) may govern certain aspects of the enforcement of the rights and remedies of the Company (including legal process and procedure) with respect to such work.

[Signature page on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the Effective Date.

|  |  |
| --- | --- |
| **the Connecticut light and power company**  By  Name:  Title: | **[Provider]**  By  Name:  Title: |

**Exhibit A**

**Form of Services Terms**

* 1. Introduction

These Service Terms relate to the Company’s procurement of Flexibility Services on its distribution system.

* 1. Service Terms Glossary

These additional terms are applicable to the Agreement and shall have the meaning set out below:

|  |  |
| --- | --- |
| 1. **“Accepted [MW/MVAR]”** | 1. the [MW/MVAR] accepted in accordance with the Service Terms; |
| 1. **“****Accepted End Time”** | 1. the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Accepted [MW/MVAR] is no longer required to be delivered; |
| 1. **“Accepted Start Time”** | 1. the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Accepted [MW/MVAR] shall be delivered; |
| 1. **“Active Power”** | 1. the product of voltage and the in-phase component of alternating current measured in units of Watts and standard multiples thereof i.e. 1000 Watts = 1kW, 1000 kW = 1MW, 1000 MW = 1GW, 1000 GW = 1TW; |
| 1. **“Availability Fee”** | 1. the fee payable in consideration for the Provider making the Distributed Resource Available and calculated in accordance with the provisions of the Service Terms; |
| 1. **“Availability Status”** | 1. Available or Unavailable; |
| 1. **“****Demand”** | 1. the demand (in MW) of Active Power consumed by the Distributed Resource; |
| 1. **“Discretionary Dispatch Request”** | 1. a request for Flexibility Services from the Company in respect of a Distributed Resource during a Discretionary Service Period; |
| 1. **“****Discretionary Flexibility Services”** | 1. additional Flexibility Services requested by the Company outside of or in addition to the Service Requirements detailed within the Service Terms; |
| 1. **“Discretionary Service Periods”** | 1. for the Distributed Resource, periods during the Term that are not Service Periods; |
| 1. **“Discretionary Utilization Fee”** | 1. the fee for providing Discretionary Flexibility Services as specified in the Service Terms; |
| 1. **“Event Cancellation”** | 1. a notification from the Company to the Provider when a Service Window has been cancelled; |
| 1. **“Event Stop”** | 1. a notification from the Company to the Provider at the end of a Service Window; |
| 1. **“****Generation”** | 1. the electrical output (in MW); |
| 1. **“****Output”** | 1. Active Power output (in MW) achieved by Distributed Resource; |
| 1. **“Performance Report”** | 1. means a report in relation to the Flexibility Services provided by a DER, or groups of Distributed Resource responding to Event Starts and Discretionary Dispatch Requests in accordance with the Service Terms; |
| 1. **“Power Requirement”** | 1. means the level of power injection or demand reduction required by the Company within a specified Service Window (if applicable) and delivered by the Provider following an Event Start; |
| 1. **“Recovery Time”** | 1. the minimum time required between the end of a Flexibility Service delivery window and the commencement of the next Flexibility Service delivery window, as defined in the Service Terms; |
| 1. **“Requested End Time”** | 1. the date and time (to the nearest minute) as notified in accordance with this Exhibit at which the Requested MW is no longer required to be delivered; |
| 1. **“****Requested MW”** | 1. the MW requested by the Company in accordance with the Service Terms; |
| 1. **“Requested Start Time”** | 1. the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Requested MW shall be delivered; |
| 1. **“Site Meter Data”** | 1. the meter data recorded at the Site Meter at the Site(s) listed in the Service Terms; |
| 1. **“****Service Period”** | 1. the period as specified in the Service Terms; |
| 1. **“Utilization Fee”** | 1. the amount payable by the Company to the Provider for the Utilization of any Flexibility Service, as defined in the Service Terms; and |
| 1. **“****Zone”** | 1. the area of the Distributed Resource being managed or where the Flexibility Services will be provided and to which the Flexibility Services will be delivered. |

* 1. Service Terms
     1. Service Parameters

|  |  |
| --- | --- |
| * 1. *Criteria* | * 1. *Contracted Service detail* |
| *Type of Service* | *[●]* |
| *Zone* | *[●]* |
| *Flexible Unit ID* | *[●]* |
| *Agreement Start Date* | *[●]* |
| *Agreement End Date* | *[●]* |
| *Contracted Service Capacity (MW/MVAR)* | *[●]* |
| *Contracted Service Windows (if specified)* | *[●]* |
| *Contracted* *Response Time (if specified)* | *[●]* |
| *Service Recovery Time (if specified)* | *[●]* |
| *Service* *Minimum run-time (if specified)* | *[●]* |
| *Maximum Utilizations (per Service Window)* | *[●]* |

* + 1. Service Windows

|  |  |  |
| --- | --- | --- |
| ***Service Period*** | *Delivery Season* | *[●]* |
| *Service Window 1 From* | *[●]* |
| *Service Window 1 To* | *[●]* |
| *Service Window 2 From* | *[●]* |
| *Service Window 2 To* | *[●]* |

* + 1. Service Requirements

|  |  |
| --- | --- |
|  | *The flexible facilities making up the Distributed Resource shall be connected and capable of exporting to or importing from the area of the system asset(s) subject to the limitation (represented by the* *zone) during intact and under first circuit outage of that system asset(s).* |
|  | *The Distributed Resource shall be able to deliver on instruction a reduction or increase in import or export, from or onto the Distribution System.* |
|  | *The flexible MW is the volume of additional consumption or* *generation that can be adjusted flexibly relative to a defined baseline level. It shall be from one or more facilities making up the Distributed Resource, can be delivered reliably and in full, is fixed for the duration of the* *service period, and must be within the conditions of each* *Facility’s Interconnection Agreement (if applicable).* |
|  | *The Distributed Resource shall have a single set of capability parameters and shall be a single point of communication and control.* |
|  | *The Distributed Resource can run for other purposes during the Service Window, subject to it maintaining its ability to meet any* *service requirements as stipulated in this Agreement. It is the responsibility of the Provider to ensure that they can deliver the contracted Flexibility Services on instruction.* |
|  | *Current exporting generator and storage asset specifications and interconnection data shall be reflected and verified in PowerClerk by the Provider.* |

* + 1. Service Specific Acknowledgements
       1. Provider hereby acknowledges that: (a) the provision of demand response pursuant to this Agreement and the participation in the Program is entirely voluntary and (b) contract award does not guarantee that any Flexibility Services will be required by the Company or commit the Company to requiring any, or any particular level of, such Flexibility Services.
       2. Provider hereby acknowledges that the Company may, in its sole discretion, for any reason, and without liability, issue an Event Cancellation by providing written notice to Provider within [\_\_] hours before Provider is scheduled to provide Flexibility Services in all or any part of the Service Window.
    2. Variation to Service Windows
       1. The Company may, with prior written agreement from Provider, make single or marginal variations to individual Service Windows or power injection requirements within the following boundaries:
          1. a Service Window may change by up to one (1) hour inclusive of extension, early instruction or delayed instruction;
          2. a Power Requirement (demand reduction, power injection or other) may be increased or lowered no more than ten percent (10%) of the contracted requirement; and
          3. the Company may seek to make service variations of this nature on no more than two (2) occasions in any contractual year, and no more than four (4) times in any contractual term.
       2. Any required changes greater than those above must be the subject of either a Discretionary Service or procurement of a new service.
    3. Discretionary Flexibility Services
       1. From time to time, the Company may at its discretion request from Provider, and subject to Provider’s Availability Status, additional Flexibility Services for Discretionary Service Periods (“Discretionary Flexibility Services”).
       2. The Company may request Discretionary Flexibility Services from Provider by sending a Discretionary Dispatch Request noting the service window, capacity needs, and utilization price (see section 6.2 in Exhibit A) in accordance with this Exhibit.
       3. The Company may:
          1. withdraw any Discretionary Dispatch Request by providing written notice to Provider at any time before Provider has provided a response under and in accordance with this Exhibit; and/or
          2. issue an Event Stop to Provider in accordance with this Exhibit.
       4. Provider may accept the Discretionary Dispatch Request in accordance with the provisions set out in this Exhibit. Provider’s acceptance in accordance with this Section 3.6.4 shall be final and binding.
       5. Where Provider fulfils the conditions set out in Section 6.3 in Exhibit A and subject to receipt of any Event Stop, Provider shall provide the Discretionary Flexibility Services to the Company using the Distributed Resource in accordance with the Accepted Start Time, Accepted End Time and Accepted [MW/MVAR].
       6. In performing the Discretionary Flexibility Services pursuant to this Agreement, Provider must comply with the technical requirements set out in this Exhibit.
       7. If Provider fails to respond in accordance with Section 6.3 in Exhibit A, Provider will be deemed to have declined the request.
       8. No Discretionary Utilization Fee shall be due to Provider by the Company for any Discretionary Flexibility Services delivered in excess of the Accepted [MW/MVAR].
  1. Invoicing & Charges
     1. All invoices should reference the statement number and assigned Purchase Order and be sent to: [smitchell2@nyseg.com](mailto:smitchell2@nyseg.com), [Michael.crowley@uinet.com](mailto:Michael.crowley@uinet.com), [ap.ocr@avangrid.com](mailto:ap.ocr@avangrid.com), and [invoiceacceptanceAdminUSA@avangrid.com](mailto:invoiceacceptanceAdminUSA@avangrid.com).
     2. Prior to invoicing, Providers will be required to complete Company’s vendor forms in order to be assigned a Purchase Order Number for payment.
     3. Charges

|  |  |  |  |
| --- | --- | --- | --- |
| 1. Utilization Fee | 1. Availability Fee 2. (including discounts for failure to respond) | 1. Values/prices | 1. Discretionary Utilization Fee |
| *[●]* | *[●]* | *[●]* | *[110% of the accepted bid price]* |

* + 1. Baselining

Performance is calculated using a “last 10-of-10 baseline method” with a same-day adjustment two (2) hours before the start of the event. Providers will not be charged a fee for poor performance. However, since this is a pay-for performance offering, poor performance on any or all events will decrease the incentive amount paid. Non-event participation, or having negative performance during an event, will be included in Provider’s seasonal average performance calculation.

To calculate Provider’s performance during an event, it is necessary to calculate what a customer’s typical power use is in order to estimate what the power use would have been if no demand response event was called. ISO-NE uses a similar last 10-of-10 model in their active demand response programs. This method assesses the customer’s last 10 similar days.[[1]](#footnote-2) An example of a baseline set by loads in the ten (10) similar days before a demand response event is shown below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1. Time Interval | 1. 10 similar days before event | 1. … | 1. 2 similar days before event | 1. Holiday, weekend, day of another DR event | 1. 1 similar day before event | 1. Baseline |
| 12pm-1pm | 500 kW | **…** | 500 kW | Not counted in average | 500 kW | 500 kW |
| 2pm-5pm | 500 kW | **…** | 500 kW | 500 kW | 500 kW |

To account for events called during extreme weather days (resulting in higher loads), the baseline is adjusted to reflect Provider’s load during the event day. This baseline adjustment is the difference between the Provider’s average load during the hour starting the two (2) hours before the event start and the load during the event day. However, Provider’s load may be lower during an event day than the last ten (10) similar days because Provider is responding to the event. Therefore, the adjustment can only be positive. Below are two examples of baseline adjustments:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | 1. Time Interval | 1. Baseline | 1. Event Day Load | 1. Baseline Adjustment |
| Example 1 | 12pm-1pm | 500 kW | 600 kW | 100 kW |
| Example 2 | 12pm-1pm | 500 kW | 400 kW | 0 kW (not negative) |

Performance is calculated by subtracting the event day load during the event from the sum of Provider’s baseline and baseline adjustment. An example of an event day performance is shown below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1. Time Interval | 1. Baseline | 1. Event Day Load | 1. Baseline Adjustment | 1. Event Day Performance 2. *(Performance = Baseline + Adjustment – Event Day)* |
| 12pm-1pm | 500 kW | 600 kW | 100 kW | 200 kW = 500 kW + 100 kW – 400kW |
| 2pm-5pm | 500 kW | 400 kW | - |

For example, in a hypothetical scenario with an assumed incentive rate of $10/kW, the incentive for an event day performance of 200 kW would be paid $2,000.[[2]](#footnote-3)

If Provider produces more energy than they consume during the baseline period or the event day through permitted and interconnected onsite generation or discharging energy storage, the net energy use will be used to calculate the Provider’s performance in the same process detailed above.

Negative performance over the course of an entire season will not be penalized. However, negative performance during a single event will count against the Provider’s average, for example:

|  |  |  |  |
| --- | --- | --- | --- |
| 1. Time Interval | 1. Customer’s Adjusted Baseline | 1. Customer’s Power Use During Event | 1. Performance |
| 3pm-4pm | 300 kW | 400 kW | -100 kW |
| 4pm-5pm | 500 kW | 400 kW | 100 kW |
| 5pm-6pm | 500 kW | 400 kW | 100 kW |
| **Average Event Performance** | | | **(-100 + 100 + 100) / 3 = 33 kW** |

* + 1. Payment Terms
       1. Company will provide an invoice to Provider, generated by the market facilitation platform provided by Piclo, within thirty (30) Business Days of the end of the month to which such invoice refers.
       2. In the event that the Company requires Provider to perform any Discretionary Flexibility Services, Company shall issue invoices on a monthly basis for any such services completed in the preceding month.
       3. The Company shall pay the Charges within thirty (30) Days of receipt of the relevant invoice (the “Due Date for Payment”).
       4. The Company may choose to effect payment of Charges using a licensed and reputable payment services provider (“PSP”) as follows:
          1. The Company may transmit to PSP the relevant funds in respect of valid invoices issued by the Company on the Piclo platform;
          2. The Company shall authorize Piclo to issue instructions to the PSP to transfer funds to Provider in respect of such valid invoices; and
          3. For the avoidance of doubt, Piclo shall not be liable for making payments directly to Provider, and plays a role as a facilitator of payments only.
  1. Sites & Distributed Resources
     1. Provider acknowledges and agrees that as at the date of this Agreement, and for the duration of the Term, the Distributed Resource(s) shall not be party to any agreements or arrangements other than an UI ConnectedSolutions, Energy Storage Solutions, or this Agreement to provide Flexibility Services to the Company during a Service Period. Please see Attachment A for a detailed list of enrolled DERs.
  2. Communications
     1. Senior Representatives

Escalations process

|  |  |  |
| --- | --- | --- |
| * 1. ***Escalation Level*** | * 1. ***Company Representative*** | * 1. ***Service Provider Representative*** |
| 1. *1* | 1. *Relevant Company Authorized Person* | 1. *[●]* |
| 1. *2* | 1. *Relevant Company Manager/Commercial Manager* | 1. *[●]* |

* + 1. Process and systems for communications

|  |  |  |  |
| --- | --- | --- | --- |
| **Event Start and Event Stop** | **Event Cancellation** | **Unavailability notices** | **Discretionary Dispatch Request and Event Stop** |
| The Event Start must specify for a Distributed Resource:   * the Zone to which the Event Start relates; * the Requested Start Time; * the Requested End Time; and * the Requested MW.   The Event Stop must specify for a Distributed Resource:   * the Zone to which the Event Stop relates; * the Requested Start Time; the Requested End Time; and * the Requested MW. | Complete the template under Section 6.4.2 | Complete the template under Section 6.4.3 | The Discretionary Dispatch Request must specify for a Distributed Resource:   * the Zone to which the Discretionary Dispatch Request relates; * the Requested Start Time; * the Requested End Time; and * the Requested MW.   The Event Stop must specify for a Distributed Resource:   * the Zone to which the relates; * the Requested Start Time; * the Requested End Time; and * the Requested MW. |

* + 1. Acceptance of instructions
       1. Provider shall accept the instruction by responding (by any method as approved by the Company) to the Event Start and Event Stop withinsixtys [sixty (60) minutes] from the time of the request, setting out:
          1. the Accepted Start Time, which cannot be earlier than, but must be no later than [sixty (60) minutes] from, the Requested Start Time;
          2. the Accepted End Time, which can be no later than the Requested End Time but otherwise has to be at [least sixty (60) minutes] from the Accepted Start Time; and
          3. the Accepted MW, [which shall be at least 0.1MW] [which shall be at least [●] % of the Requested MW] and can be no greater than the Requested MW.
       2. Provider may accept the Discretionary Dispatch Request and Event Stop by responding (by any method as approved by the Company, per Section 6.4 in Exhibit A) to the Discretionary Dispatch Request within [fifteen (15) minutes] from the time of the request, setting out:
          1. the Accepted Start Time, which cannot be earlier than, but must be no later than [fifteen (15) minutes] from, the Requested Start Time;
          2. the Accepted End Time, which can be no later than the Requested End Time but otherwise has to be at least [fifteen (15) minutes] from the Accepted Start Time; and
          3. the Accepted MW, [which shall be at least [0.1MW] [which shall be at least [●]% of the Requested MW] and can be no greater than the Requested MW.
       3. The Provider shall acknowledge receipt of Event Starts, Discretionary Dispatch Requests, and Event Stops by written notification to the Company within [\_] hours of receipt of the Instructions.
    2. Reporting processes and requirements
       1. The Provider shall provide the information requested under Section 6.3 in Exhibit A for Event Starts, Discretionary Dispatch Requests, and Event Stops in accordance with the below template:

|  |  |
| --- | --- |
| 1. *Company Name:* |  |
| 1. *Zone ID:* |  |
| 1. *Flexible Unit:* |  |
| 1. *Accepted Start Time:* |  |
| 1. *Accepted End Time:* |  |
| 1. *Accepted MW:* |  |
| 1. *Name:* | 1. *[of individual making notification]* |
| 1. *Date and Time:* | 1. *[of notification]* |

* + - 1. The Provider shall provide the information requested for the Event Cancellation under Section 3.4.2 in Exhibit A in accordance with the below template:

|  |  |
| --- | --- |
| 1. *Company Name:* |  |
| 1. *Zone ID:* |  |
| 1. *Flexible Unit:* |  |
| 1. *Accepted Start Time:* |  |
| 1. *Accepted End Time:* |  |
| 1. *Accepted MW:* |  |
| 1. *Name:* | 1. *[of individual making notification]* |
| 1. *Date and Time:* | 1. *[of notification]* |

* + - 1. Provider shall provide the information requested for the notification of Unavailability of Flexibility Services under Section 7.2 of the Agreement in accordance with the below template:

|  |  |
| --- | --- |
| 1. *Company Name:* |  |
| 1. *Zone ID:* |  |
| 1. *Flexible Unit:* |  |
| 1. *From Date/Time:* | 1. *[Unavailable from]* |
| 1. *To Date/Time:* | 1. *[Unavailable to]* |
| 1. *Reason:* |  |
| 1. *Name:* | 1. *[of individual making notification]* |
| 1. *Date and Time:* | 1. *[of notification]* |

* 1. Performance Monitoring
     1. Metering Standards

Revenue and interval meter data, as well as asset-level data (e.g., smart thermostats, inverters) from the site is acceptable.

* + 1. Submission of Performance Report

To submit Performance Reports, Provider must upload their baseline and performance data to the Piclo platform. Piclo will use the uploaded data to conduct the baseline and performance calculations and generate a Performance Report that will be shared with Provider and the Company for their records.

Provider or the Company may dispute the Performance Report within ten (10) Business Days of publication. Piclo will have up to ten (10) Business Days upon written receipt of the dispute to review the case with the Company. Upon final review, the Company will approve or deny the Performance Report modifications from the dispute within three (3) Business Days.

* 1. Details of Provider and Special Conditions

|  |  |
| --- | --- |
| **Provider** | **Provider**’**s** **company number and registered office** |
| [●] | [●] |
| **Requested MW** | [●] |
| **Contract number** | [[to be completed by the Company post award]] |
| **Provider**’**s addresses for notices** | [●]  Address: [●]  Contact Number: [●]  For the attention of: [●] |
| **Company**’**s addresses for notices** | [●]  Address: [●]  Contact Number: [●]  For the attention of: [●] |
| **Provider**’**s Nominated Person** | [●] |
| **Company**’**s Nominated Person** |  |

* 1. Commencement and Expiration Dates

|  |  |
| --- | --- |
| **Commencement Date** | The Agreement shall commence on the date on which the Agreement is made. |
| **Expiration Date** | [●] or the date on which the Agreement may be terminated in accordance with Section 6 in Exhibit A). |

**Attachment A**

[list of DERs, asset details, and commitments]

1. Similar days are defined as the same day type (weekday or weekend) that are not holidays and where no other DR event from either ISO-NE (under “OP-4”) or ConnectedSolutions was called. [↑](#footnote-ref-2)
2. $2,000 = $10/kW × 200 kW. [↑](#footnote-ref-3)