

# Appendix D Reservation of Rights, Waivers, and Acceptances

## 1. Reservation of Rights

Notwithstanding anything to the contrary, SVCE may, and expressly reserve the right to, at any time and from time to time, without prior notice and without assigning or providing any reason therefore:

- cancel, suspend, withdraw, or terminate this RFO (including, without limitation, after the selection under this RFO of one or more Respondents for a PPA) or cancel or suspend its participation in this RFO;
- modify this RFO, including, without limitation, any Appendix to this RFO, or any of the dates, times or places set forth in the RFO or related to the RFO process;
- accept, refuse to accept, consider, not consider, favor, disfavor, recommend, not recommend, pursue or reject any proposal, in its sole and absolute discretion, for any reason;
- without limitation of the generality of any of the other terms herein, reject or eliminate any proposal submitted in response to this RFO that is incomplete, is nonconforming, or contains irregularities (or waive any irregularity in any proposal), or that it determines was made with the intent to create artificial prices, terms, or conditions or would have that effect;
- carry out negotiations with any, some or all Respondents or other persons related to this RFO, and suspend or terminate negotiations with any Respondent or other person at any time, including, without limitation, because of any change in resource needs of SVCE giving rise to this RFO;
- discuss the terms of any proposal or any other material submitted by Respondent with, and obtain clarification or additional information concerning such proposal or such other material from, Respondent or its directors, officers, employees, agents, representatives, and advisors;
- request from Respondent information not detailed in or required by this RFO but that may be necessary or relevant to the evaluation of Respondent's proposal(s) and utilize such information as SVCE deems appropriate in connection with such evaluation of this RFO;
- receive, consider, pursue, or transact on (i) opportunities to acquire other assets or resources offered or that become available outside of the RFO process as such opportunities arise or (ii) proposals offered in response to this RFO that are nonconforming or eliminated from consideration in this RFO;
- invite further proposals in or outside of this RFO or supplemental submissions of proposals;
- determine which Respondents or entities to allow, or continue to allow, to participate in the RFO process;
- pursue or transact on proposals offered in response to this RFO regardless of any rank order established in the RFO evaluation process to promote diversity of supply in this RFO, gain experience with different technologies, limit exposure to a counterparty, technology or resource or a particular set of risks, or achieve other commercial goals SVCE deem appropriate;
- sign or not sign PPA(s) with Respondents or other persons relating to the Transactions solicited by this RFO;
- subject to the terms of any applicable confidentiality agreement entered between SVCE and Respondent, retain, archive, or destroy any information or material provided to or for the

- benefit of SVCE in the proposal submission process; and
- take any and all other actions it deems necessary or appropriate, in its sole and absolute discretion, in connection with this RFO and the RFO process.

Each of the foregoing rights (including any right listed in a series of rights) may be exercised by SVCE or any director, officer, employee, or authorized agent or representative of SVCE or their respective parent. The reservation of rights contained herein is in addition to all other rights reserved or granted to SVCE or any of its Affiliates elsewhere in this RFO or otherwise held by or available to SVCE or any of its Affiliates.

## 2. No Warranties or Liabilities

BY PARTICIPATING IN THE RFO PROCESS, EACH RESPONDENT AGREES THAT, EXCEPT TO THE EXTENT CONTAINED IN A PPA WITH RESPONDENT:

- (A) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF SVCE OR ANY OTHER AFFILIATE OF SVCE, CCCE, PCE & SVCE IN CONNECTION WITH THIS RFO IS PROVIDED WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, AND
- (B) SVCE, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND ADVISORS SHALL HAVE NO LIABILITY TO ANY RESPONDENT, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, LENDERS, OR INVESTORS RELATING TO OR ARISING FROM THE USE OF OR RELIANCE UPON ANY SUCH INFORMATION, ANY ERROR OR OMISSION THEREIN, OR OTHERWISE IN CONNECTION WITH THIS RFO.

## 3. Acceptance of Proposals

Without prejudice to the SVCE's rights at law or in equity, no proposal submitted by any Respondent shall be deemed accepted by, or otherwise binding upon, SVCE or any of their Affiliates and SVCE, their affiliates and their respective directors, officers, members, employees, agents and representatives shall have no obligation or liability of any kind with respect to any such proposal or otherwise in connection with this RFO, unless and until a PPA has been mutually executed and delivered by SVCE or any of their Affiliates and seller, and then such obligation or liability shall exist only if and to the extent expressly set forth or provided for therein or in another signed, binding written agreement entered into by SVCE or any of their affiliates and seller.

Notwithstanding anything to the contrary in this RFO, all proposals delivered to SVCE shall become the sole and exclusive property of SVCE upon receipt, and SVCE shall have all rights and privileges of ownership of such property, subject to any provision of this RFO relating to confidentiality and any applicable confidentiality or other signed, binding written agreement between SVCE and Respondent or seller executed in connection with this RFO process.

## 4. Respondent Costs and Expenses

Each Respondent is solely responsible for all costs and expenses it incurs in connection with this RFO. Through its participation in this RFO, each Respondent agrees that under no circumstance, including, without limitation, SVCE withdrawal from or suspension, cancellation, or termination of the RFO process, will SVCE, any of their affiliates or any of their respective directors, officers, members, partners,

employees, agents, representatives or advisors have any responsibility or liability of any kind to Respondent, its affiliates or any of their respective directors, officers, members, partners, trustees, employees, agents, representatives, advisors or lenders for any cost or expense directly or indirectly incurred by Respondent (no matter how incurred) in connection with the RFO process. Nothing in this Section 4 shall be construed to limit the generality of Section 2 above.

## **5. Respondent Disclosure of RFO Information**

No Respondent may, without the prior consent of SVCE, disclose to any other person (except CCA staff) its participation in the RFO process (other than by attendance at any meeting to which more than one participant is invited by SVCE, which attendance in and of itself will not violate this provision of this RFO).

Further, no Respondent may disclose, collaborate on or discuss with any other person (except CCA staff) bidding strategies or the substance of proposals, including, without limitation, the price or any other terms or conditions of any contemplated, indicative or final proposal. Any such disclosure, collaboration or discussion would violate this RFO and may result in the rejection of Respondent's proposal or elimination of Respondent from further participation in this RFO.

## **6. Respondent Acceptance of this Appendix D**

By participating in the RFO process, each Respondent agrees that it will be deemed to have accepted all the rights and terms included in this Appendix D and to have agreed that its participation in the RFO is subject to such rights and terms. SVCE is conducting this RFO and participating in the RFO process in reliance upon the foregoing agreement.