



REQUEST FOR PROPOSALS

FOR

DEAL CAPTURE AND SETTLEMENTS SOFTWARE

RFP Release Date: Feb 4, 2022

**RFP Submittal Deadline: March 11, 2022 at 5:00 PM
Pacific Time**

1) 1 Contents

2 Silicon Valley Clean Energy Overview..... 3

3 RFP Overview..... 3

4 RFP Tentative Timeline 4

5 Proposal Submittal 5

6 Review and Selection Process..... 7

7 Agreement Terms 7

8 Inclusion of Non-Participating Agencies..... 7

9 California Public Records Act..... 9

10 Ex Parte Communication 9

11 Insurance Requirements..... 9

12 Conflict of Interest/Statement of Non-Collusion 10

13 Addenda..... 10

14 Certifications 10

15 Rights of SVCE..... 11

16 Background 11

17 High Level Scope of Work..... 11

Attachment A – Standard Professional Services Contract..... 17

2 Silicon Valley Clean Energy Overview

Silicon Valley Clean Energy (SVCE), a Community Choice Energy agency, is redefining the local electricity market and providing our residents and businesses with new clean energy choices—renewable and carbon-free electricity at competitive rates. SVCE was formed as a Joint Powers Authority in 2016, and now serves approximately 270,000 residential and commercial electricity customers across a service area comprised of the following thirteen communities: Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and Unincorporated Santa Clara County. 97% of electricity customers in SVCE’s service area receive their electricity from SVCE. For more information on SVCE, please visit: <https://www.svcleanenergy.org/>.

SVCE has begun the process of advancing its operations through a broad effort being labeled Business Process Optimization (BPO). The goals of the BPO effort are to engage staff across the organization to create integrated, automated, secure, auditable systems that are right-sized to the organizations current needs, yet adaptable to future growth. Through BPO, SVCE is aiming to improve staff efficiency and optimize decision-making through better insight into data and enhanced analysis options that improve overall risk management. Phase 1 of the BPO effort is focused on implementing a Deal Capture and / or Settlement Software platform to integrate with SVCEs current Central Data Repository (DAISY) and additional future components (i.e. CRM, Financial Accounting, Revenue Modeling, etc). For more information on SVCE’s overarching procurement strategy and long-term power purchases, please visit: <https://www.svcleanenergy.org/programs/>.

3 RFP Overview

With this request for proposals (RFP), SVCE seeks information about the experience and qualifications of your organization (Proposer), system implementation, and ongoing support as described in this RFP’s scope of work. Proposers should provide one proposal in response to this RFP and indicate which Section(s) of the scope to which they are responding. Proposers are encouraged to apply for all Sections of the scope to which they are qualified. SVCE reserves the right to award work for different Sections to different Proposers, to not award work for one or more Sections, or to award work to no Proposers.

This RFP:

- Describes the scope of services sought by SVCE
- Outlines key dates and the proposed timeline
- Provides an opportunity for Proposers to describe their relevant qualifications and assets, and to explain how they could contribute
- Provides an opportunity for Proposers to identify any areas not identified in the RFP that would add substantial value to SVCE’s Deal Capture and Settlement Software scope of work

4 RFP Tentative Timeline

This tentative schedule is provided for the convenience of Proposers, but may be subject to change at any time by SVCE. Any such changes will be stated in an addendum to this RFP or otherwise communicated to Proposers.

Date	Event
February 4, 2022	RFP issued
Feb. 28, 2022 at 5:00 PM Pacific Time	Deadline for questions, clarifications (see below)
March 4, 2022 at 5:00 PM Pacific Time	Question responses posted online
March 11, 2022 at 5:00 PM Pacific Time	Deadline for Proposers to submit proposals
March 18, 2022	Top Proposers notified of interview times, if applicable
March 28 through April 1, 2022	Possible interviews of top Proposers
April 1, 2022	Anticipated date SVCE will notify awardees
April 29, 2022	Anticipated date contract finalized
May / June 2022 SVCE board meeting(s)	Anticipated date(s) of Board approval
Late May / June 2022	Work Commences

Notes:

- Questions: Proposers may submit questions concerning the RFP solicitations@svcleanenergy.org. All questions and answers will be shared with all Proposers and will be posted in the same location as the RFP, at <https://www.svcleanenergy.org/solicitations/>. Questions must be emailed and received by SVCE no later than **February 28, 2022 at 5:00 PM PT**. SVCE shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by SVCE or its representatives.
- Proposal Review: SVCE may request clarifications of submitted proposals by email or phone on **between March 11 and 18, 2022**. Prompt responses will be requested.
- Proposer Interviews: SVCE may choose to conduct in-person/phone interviews of the top Proposers from **March 28 to April 1, 2022**.

5 Proposal Submittal

Proposals must be received on or before the above deadline and submitted by email to solicitations@svcleanenergy.org with the subject "Proposal - <Organization> - Deal Capture and Settlements Software RFP".

Only electronic submittals in PDF format will be accepted.

Proposals must include the following sections (to be submitted in this order only):

1. Administrative Information (1 pg. max)
 - Provide administrative information, and include at a minimum: name, mailing address, phone number, and email of designated point of contact.
2. Proposal summary (2 pg. max)
 - Discuss the highlights, key features and distinguishing points of the proposal.
3. Organization description and qualifications (6 pg. max)
 - Provide an overview of your organization. Include overall organizational structure, number of employees, legal structure and ownership. Provide a current client list.
 - Describe resources and organizational structure with respect to the Deal Capture and Settlement Software RFP. Provide a brief bio for key staff that will work on this project and highlight their credentials. Attach full resumes of key staff.
 - Provide a description of primary business model(s).
 - Provide an overview of your qualifications and previous experience on at least three similar or related projects including providing related services to any Load Serving Entities in California. Include descriptions, costs, timeline and reference contact information.
 - Please describe your specific experience and engagement in California and/or the SVCE territory, Include the type of engagement, with who, for what purpose, and for how long. Include the number of end-customers served.
 - Complete this information for all Proposers (and Sub-Proposers, if applicable) that are included in the proposal.
4. Proposed solution (5 pg. max for each Section (see Section definition below); accompanying power point 10 slides max for each Section)
 - The Scope is divided into two (2) Sections which cover Deal Capture and Settlements Software Solutions. Please indicate which Section(s) your solution addresses. Describe your solution.
 - Provide an explicit description (via narrative, diagram, flowchart, etc) of the final software solution(s) that will be implemented under the proposal
 - Describe integration requirements or options (with SVCE systems or data). Describe API/integration capability with cloud-based data warehouses such as Google BigQuery. Please indicate other (solution, technology, service, data) providers that you currently work with that your solution is integrated with.
 - Describe the hardware and software requirements of your solution.
 - Describe the inputs and outputs of your solution, including: data requirements, data sources, API integration capabilities, output formatting to support SVCE needs.
 - Describe the user interface of your solution.
 - Describe the level of customization available.
 - Describe the level of ongoing support.

- Include information about your system and data security plan.
 - Describe system service levels that would be part of a service level agreement. Describe system support. Indicate also what customer support options are offered.
 - Indicate how the proposed solution could be leveraged by other CCAs.
 - Suggest any innovations, additions or modifications to the scope that SVCE prepared, including future modules / expansions.
 - Describe the level and types of SVCE support needed to implement the solution.
5. Proposed work plan and schedule (4 pg. max; table or chart for the schedule)
- Present a well-conceived work plan. Indicate which Sections the work plan covers. Include a full description of each task. Show how the work plan would meet SVCE's KPIs and schedule.
 - Illustrate how the work plan would proceed and what the key milestones or benchmarks would be, along with required levels of SVCE staff and stakeholder engagement.
6. Cost proposal (3 pg. max)
- For Sections One and Two (each)– Deal Capture and Settlements
 - Include all costs such set up fees, license fees, etc.; and direct labor rates and estimated hours for named project resources if applicable; and subcontractor rates if applicable.
 - Include the costs for the customizations described in the proposed solution.
 - Include the costs for ongoing support as described in the proposed solution.
 - Include cloud hosting and setup costs, if any
 - Estimate other direct costs and reimbursable expenses, if any, and associated mark-up percentages, if any.
 - Include a breakdown of costs by deliverable.
 - Include any revenue share or cost reduction elements.
 - Indicate any pricing adjustment if another CCA implements a similar solution. Indicate any additional costs associated with customer engagement.
 - Be sure to separate costs associated with optional integration with SVCE systems and data.
 - If responding to both sections, please provide any cost advantage / economy of scale realized by implementing solutions to both Sections together.
7. Confirmation of acceptance of contract terms or explanation of proposed contract modifications (see Section 7 of this RFP)
- List all exceptions or requested changes that Proposer has to SVCE's standard contract. Items not excepted will not be open to later negotiation.
8. Inclusion of non-participating agencies (see Section 8 of this RFP)
- Indicate Proposer's willingness to extend the terms of resulting contracts to other similar entities.

6 Review and Selection Process

In addition to, or in reiteration of, the aforementioned minimum proposal requirements, all of which are mandatory, proposals will be evaluated based on the following non-exclusive list of criteria:

- Qualifications and experience of the Proposer providing similar products and services, including the capability and experience of key personnel as well as experience with other public and/or private agencies in similar capacities
- History of successfully providing deal capture and settlement software to CPUC jurisdictional load serving entities including services for public and/or private agencies and other CCAs and Energy Service Providers
- Financial viability of the Proposer
- Cost to SVCE for the products and services identified in this RFP
- Proposed approach, including a clearly-demonstrated understanding of the intended scope of services to be provided demonstrated as:
 - Quality and coverage of system capabilities against high-level functional requirements for each Section
 - Availability of consultative work for future system configuration, updates, and training
 - Sophistication of models/tools to be used
 - Approach for interacting with SVCE's staff, scheduling coordinators, and consultants
- Ability to meet any required timelines or other requirements
- Existence of and circumstances surrounding any claims or violations of law or governmental regulations against the Proposer, its representatives and/or partners
- Pertinent references
- Acceptance of SVCE's standard contract terms and conditions

SVCE reserves the right to consider factors other than those specified above and to request additional information from any/all Proposers as a part of the selection process.

7 Agreement Terms

Awardees will be required to enter into a contract using SVCE's standard contract terms. Modification of the contract terms may be proposed by the Proposer for consideration by SVCE but are not guaranteed to be accepted. Rejection of the final terms from SVCE is grounds for disqualification.

SVCE's standard contract terms are available for review in Appendix A.

8 Inclusion of Non-Participating Agencies

SVCE is asking all responding Proposers to indicate their willingness to extend the terms of resulting contracts, inclusive of price, to other interested California-based municipalities, municipally-owned utilities and community choice energy programs. While this clause in no way commits these agencies to contract with SVCE's awarded consultant, nor does it guarantee any additional orders will result, it does allow other agencies, at their discretion, to make use of SVCE's competitive process (provided said process satisfies their own procurement guidelines) and enter into a contract directly with the awarded consultant. All

contracts entered into by other agencies shall be understood to be transactions between that agency and the awarded consultant; SVCE shall not be responsible or liable in any manner for any such contracts.

9 California Public Records Act

All parties acknowledge that SVCE is a public agency subject to the requirements of the California Public Records Act, Cal. Gov. Code section 6250 et seq. ("CPRA"). SVCE will not disclose any part of any proposal before it announces a recommendation for an award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure, with the exception of those elements in each proposal which are exempt from disclosure pursuant to the CPRA.

If a Proposer believes there are portion(s) of the proposal which are exempt from disclosure, the Proposer must plainly mark it as "Confidential", "Proprietary", or "Trade Secret." SVCE may also request that the Proposer state the specific provision of the CPRA which provides the exemption, and the factual basis for claiming the exemption. Any proposal which contains language purporting to render all or significant portions of the proposal as "Confidential," "Trade Secret," or "Propriety," will be considered non-responsive and a public record in its entirety.

Although the CPRA recognizes that certain confidential trade secret information may be protected from disclosure, SVCE may not be in a position to establish that the information a Proposer submits is a trade secret. If a public records request is made for information marked "Confidential," "Proprietary," or "Trade Secret," SVCE will provide the Proposer(s) who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. The Proposer shall be solely responsible for taking such legal steps; if the Proposer takes no such action after receiving notice of the public records request, SVCE will disclose all records it deems subject to disclosure, even if marked "Confidential," "Trade Secret," or "Proprietary."

10 Ex Parte Communication

Please note that to insure the proper and fair evaluation of a proposal, SVCE prohibits ex parte communication (i.e., unsolicited) initiated by the Proposer to an SVCE Official or Employee evaluating or considering the proposals prior to the time a bid decision has been made. Communication between Proposer and SVCE will be initiated by the appropriate Agency Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the proposal. Ex parte communication may be grounds for disqualifying the offending Proposer from consideration or award of the proposal, then in evaluation, or any future proposal.

11 Insurance Requirements

All insurance shall be secured from or countersigned by an agent or surety company recognized in good standing and authorized to do business in the State of California.

The Proposer shall, within thirty (30) days of notification of award and prior to commencement of work, take out and maintain in full force and effect minimum insurance coverage as specified in the attached requirements. This insurance shall remain in force and effect throughout the duration of the contract.

A certificate of existing insurance coverage should be submitted with the proposal as proof of insurability. If the current coverage does not meet the RFP requirements, then the Proposer should request an affidavit of insurability from the Proposer's insurance agent that certifies the requirements can and will be met. Failure to provide adequate insurance coverage may be cause for disqualification as non-responsive to the RFP requirements.

12 Conflict of Interest/Statement of Non-Collusion

All Proposers must disclose with their proposal the name of any officer, director, or agent who is also an employee of SVCE. Further, all Proposers must disclose the name of any SVCE employee who owns, directly or indirectly, an interest of five percent (5%) or more of the Proposer's firm or any of its branches.

The Proposer shall certify that he/she has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the proposal and that the Proposer is not financially interested in, or otherwise affiliated in a business way with any other Proposer on the same land or improvements.

13 Addenda

It is the Proposer's responsibility to contact SVCE prior to submitting a proposal to ascertain if any addenda have been issued, to obtain all such addenda and return executed addenda with the proposal.

The failure of a Proposer to submit acknowledgement of any addenda that affects the proposal price(s) may be considered an irregularity and may be cause for rejection of the proposal.

14 Certifications

The submission of a proposal shall be deemed a representation and certification by the Proposer that it:

- Has read, understands and agrees to the information and requirements set forth in this RFP.
- Has the capability to complete the responsibilities and obligations of the proposal being submitted
- Represents that all information contained in the proposal is true and correct
- Acknowledge that SVCE has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants SVCE permission to make these inquiries
- Will provide any and all documentation related to the proposal in a timely manner
- Is eligible to submit a proposal because he/she is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a transaction by any Federal, State, or local department or agency

15 Rights of SVCE

SVCE is not obligated to respond to any proposal submitted as part of the RFP. **SVCE at its sole discretion reserves the right to waive technicalities or irregularities, to reject any or all proposals, and/or to accept that proposal which is in the best interest of SVCE.** The award of this proposal, if made, may be based on considerations other than total cost and may be awarded based on various considerations, including without limitation; Proposer's experience and/or qualifications, past experience, administrative cost, standardization, technical evaluation and oral and/or written presentations as required. SVCE reserves the right to accept all or part, or to decline the whole, and to award this RFP to one (1) or more Proposers. There is no obligation to buy. The RFP, if awarded, will be in the judgement of SVCE as the most responsive to the agency's needs.

16 Background

SVCE seeks one or more qualified organizations to improve the efficiency and efficacy of deal capture and settlement operations. SVCE seeks a secure system(s) that will help SVCE automate internal processes with clear, auditable outputs. Proposed systems should be right-sized to SVCEs current needs, but be configurable to adapt to future needs. The system(s) should include sufficient ongoing support to ensure full engagement and competency across SVCE staff.

SVCE provides energy to retail customers in its service territory that entails business activities such as; bilateral purchases and sales of electricity under short-, medium- and long-term contracts; scheduling of load and generation of electricity into California Independent Systems Operator (CAISO) markets; retail marketing of electricity to consumers within its service territory; compliance with voluntary objectives and regulatory requirements as it relates to carbon free and renewable portfolio standard (RPS) compliant energy; participation in CAISO Congestion Revenue Rights ("CRRs") market; managing the balance of load and generation over short, medium and long term horizons; and compliance with California Public Utilities Commission (CPUC) Resource Adequacy (RA) requirements.

17 High Level Scope of Work

The following section details the scope of work and requirements SVCE seeks and is meant as an initial guide for the submitted proposal. SVCE is looking for a product or products to manage power purchase agreements, capture transactions, reconcile loads, purchases and sales, settle with counterparties and the CAISO, and satisfy reporting needs. The successful proposal submission must demonstrate that the provider has the appropriate professional and technical background and can fulfill the stated scope of work. The scope of work below is provided as a high-level overview of the desired system capabilities, and is not intended to be an exhaustive list of detailed technical requirements. Specific system capabilities and features will be considered during the evaluation process.

Section 1: Deal Capture Software Module

- Integration with Planning
 - Integrate trading with Operations Plan – by accepting / interfacing with plan with market prices, load forecasts, , generation, etc
- Manage Wholesale Products
 - Support all required instruments, including PPAs, Resource Adequacy (RA), OTC and exchange-traded instruments, short-term and long-term deals, futures, swaps, options and custom products
 - Flexibility to handle new products, attributes and calculations
 - Support service levels for physical transactions including firm, non-firm, and hybrid resources to economically match supply quality with load
 - Support capturing hourly and sub-hour time periods (e.g. 5, 10, 15, 30 min) data;
 - *Secondary:*
 - *Support multiple time zones; ancillary services products, transmission purchase / sale, weather derivatives*
- Manage Counterparty Relationships
 - Track basic counterparty company and contact information
 - Track supplier contract information to enable transactions with alternatives suppliers through master contracts for purchases and sales
 - Manage lines of credit and margin requirements with suppliers, brokers, and exchanges
- Deal Capture and Purchase / Sale of Commodities
 - Capture all financial details of purchase and sale deals through unique ID using industry standard deal profile templates (HLH, LLH as standards)
 - Deal status should be trackable and have update rules based on staff role within the deal workflow; roles should allow for customizable views / sorting of data at relevant levels of detail
 - Ability to recreate status of portfolio with relevant deal statuses as of a specific historical date
 - Ability to define billing timing and multiple quantity sources (contracted, metered, scheduled, RECs)
 - Ability to capture custom deal structures and add new attributes (fields and associated attributes) based on user needs without custom implementation / additional costs
 - Ability to handle on the fly calculations for one-off analyses
 - Ability to capture basis differentials, exchange deals, multiple deal components; broker fees (flat / formula)
 - Ability to capture Delivery Point or Volume Optionality trades (assist in managing as specifics are defined / chosen)
 - Ability to capture deal contingencies
 - Allow for creation of trade templates for simple creation of new trades
 - Ability to create automated confirms with specific contract provisions for internal / external distribution
 - Capture all following data: Market Setup (Hubs, LMPs), Counterparty Data, Credit Limits, Trader Limits, Trading Products
- Contract Management

- Store hundreds of contracts and vendor data elements, with numerical and text fields for capturing unique contract provisions
- Capture the entire contract lifecycle from negotiations through retirement, for projects of a few months to several decades
- Tag and assign parent-child relationships between various contracts
- Provide secure storage for associated documents for each contract, using a unique Contract ID field
- PPA Management
 - Track contract milestones both individually and at the portfolio level for different energy agreements (including storage)
 - Provide alerts of upcoming milestones
 - Manage and track various energy products, including Renewable Energy Certificates, Resource Adequacy, Ancillary Services
- Reporting
 - Standard reports along with ability to create on-the-fly custom reports including:
 - Mark-to-Market
 - Credit Limits
 - Trader Limits
 - Open Position
 - Energy
 - Carbon Free
 - Renewables
 - RA

Section 2: Settlements Software Module

- Reconcile Loads
 - Capture of actual customer usage load data for: billing customers, settling with suppliers, settling with ISO
 - Handle automatic uploads of aggregated load data at various levels and manage necessary conversions
 - Ability to submit properly-formatted load data to ISO at appropriate intervals
 - Store data a 5-min intervals; convert monthly consumption to hourly via load profiles; track appropriate loss factors and apply to loads
- Reconcile Purchases and Sales
 - Reconcile Supplier Commodity Invoices to validate volumes and pricing
 - Create invoices for resold commodities
 - Reconcile charges on contract-specified schedules
 - Provide intra-month shadow settlement capability
 - Maintain daily / monthly settlement margin requirements with brokers / exchanges
 - Compare actual hourly metered consumption with scheduled volumes to determine purchases / sales in the imbalance market for reconciliation with CAISO statements
 - Compare contracted and delivered quantities at lowest granularity via data integration with deal capture system
- Manage Adjustments
 - System should track transactions cuts for reconciliation purposes

- System should allow for controlled adjustments in prior-period transactions. Volume / Price changes should be includable on current invoices / remittances
- Settle with Counterparties
 - Manage settlements with suppliers and other parties via automated reconciliation; showing exceptions / out of balance transactions based on defined tolerances
 - Matching of invoices with consumption records at summary or line-item detail level, with appropriate controls
 - Approve payments consistent with SVCE controls and procedures
 - Interface appropriately with accounting system to facilitate payment and record updates at the appropriate level of detail
 - System should calculate expected settlements based on relevant billable quantity for specific transactions; ability to split out disputed amounts
 - System should be able to store confirmation of checkout acceptance and provide notification to counterparties on defined lists
 - System should store / display transactions based on delivery / payment month; party / counterparty pair, transaction type, product, deal
 - True up capability to define quantity / amount and applicable delivery period
- Settle with CAISO
 - Automatically retrieve and store CAISO Invoices, Statements, and Bill Determinants from MRI-S system in both XML and PDF formats
 - Parse and store CAISO payment calendar in appropriate database table
 - Archive CAISO MRI-S files in source format for later ad-hoc reprocessing
 - Automatically calculate CAISO shadow settlements upon input data refresh
 - Store CAISO data in queryable database structure
 - Ability to import data from Scheduling Coordinator
- PPA Performance and Tracking
 - Ability to calculate PPA settlements at 5-min intervals
 - Ability to track contract compliance / performance measures (GEP, expected energy)

Overall requirements (applicable to both Sections)

Functional Requirements

- Reporting
 - System should allow for custom reporting and display of data elements via user-defined logic
 - System should allow for report export and integration of 3rd party reporting tools
 - System should support regulatory reporting requirements for both federal and state entities
- Security
 - System should appropriately “freeze” transactions based on status and require role-based authorization to “unfreeze”
 - System should have robust user management and security features to protect confidential information based on role and regardless of storage location
- Audit Trail
 - System should provide history / version control to create audit trail with relevant audit information (User ID, timestamp, values (old / new))

- System should provide historical data and reporting as-of past dates to compare to current information
- Limit Handling
 - System should have customizable notifications / warnings based on user-specified trade limits
- Configuration
 - System should follow basic Front, Middle, Back Office booking structure and provide table-driven user configuration to the maximum extent possible
- Documentation
 - Should be clear and thorough to enable straightforward onboarding of new users
- Controls
 - System should have robust controls to manage transactions outside of normal tolerance windows, allowing approvals only to authorized roles
- Data Export and Retrieval
 - System should be able to easily import data via upload or API either directly from data source or internal SVCE data warehouse
 - System should be able to flexibly export data to meet compliance needs, and allow for ad hoc / user-defined exports in common (CSV, XLS) formats
 - System should allow for comparative calculations, between existing data and retrieved data (e.g. expected vs actual amounts)
 - System should allow for automated data harvesting via API from exchanges, data repositories, and outside providers (i.e. ICE, PPA Process Data, etc).

Technical Requirements (apply to each Section)

- Technology Platform
 - System should provide web-based, 24 hour availability to users and allow for hot standby capability; background processing should allow continuous access to users
 - System must be scalable, supporting multi-site usage and up to 100 users
 - System should provide sub-second response times for a majority of transactions
- Database
 - System should utilize an open source backend and tools to provide transparent access to SVCE staff. Database should allow for multiple query formats, including SQL, MS PowerQuery, Power BI, Python, R; using appropriate IDE clients (e.g. Toad for Oracle) where appropriate
 - Data should be stored using UTC time for all time-series data, and be translated to Pacific Prevailing Time (PPT) for 5-minute granularity
 - Queries should be schedulable at user-defined times / intervals
 - Data structures should follow relevant schemas, tables, views and be user-definable.

System Integration Requirements (apply to each Section)

- Deal Capture and Settlements must maintain data connection through Contract ID as key field
- System should be aligned with external data feeds for input, including CAISO, CARB, EIA, and other external systems, including PPA Process Data
- System should enable downstream integration with other SVCE tools via APIs, including internal SVCE General Ledger, DAISY Data Warehouse, Scheduling Applications, and Portfolio and Risk Management Systems.
- Proposer should specify options for software updates in response to industry changes by market operator and/or regulators (CAISO, CPUC, CEC, CARB, etc.).

Attachment A – Standard SVCE Software as a Service Agreement

MASTER AGREEMENT

SOFTWARE AS A SERVICE

This agreement ("Agreement") is entered into and is effective as of [Effective Date] ("Effective Date"), by and between Silicon Valley Clean Energy, an independent public agency located at _____, California 9____ ("SVCE") and [SERVICE PROVIDER NAME], a [Service Provider's legal status] located at [Service Provider Address] ("Service Provider").

RECITALS

WHEREAS, SVCE requires third-party hosted "software as a service" services, as further described herein, with respect to certain of its information technology needs;

WHEREAS, SVCE requested a proposal from Service Provider for such Services;

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, Service Provider submitted a proposal to SVCE to perform such Services on behalf of SVCE;

WHEREAS, based on Service Provider's superior knowledge and experience relating to such Services, SVCE has selected Service Provider to provide and manage the Services;

WHEREAS, Service Provider wishes to perform the Services and acknowledges that the successful performance of the Services and the security and availability of SVCE's data are critical to the operation of SVCE's business; and,

WHEREAS, Service Provider has agreed to provide the Services to SVCE, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. Term. This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement is terminated earlier in accordance with the terms set forth herein, the term (the "Initial Term") shall commence on the Effective Date and continue for [years]. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, this Agreement may be renewed for up to _____, successive one (1) year terms (each, a "Renewal Term") upon mutual written agreement of the parties.
2. Not to Exceed Amount. SVCE shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A, subject to the terms and

conditions contained in this Agreement, including, but not limited to, Section 10 Fees; Billing, below. The total amount payable to Service Provider under this Agreement shall not exceed _____ (\$_____).

3. The Services. This Agreement sets forth the terms and conditions under which Service Provider agrees to license to SVCE certain hosted software and provide all other services necessary for productive use of such software including **customization / integration, user identification and password change management, data import / export, monitoring, technical support, maintenance, training, backup and recovery, and change management** (collectively, the "Services") as further set forth in Exhibit "A" attached hereto.

3.1 Authorized Users. Unless otherwise limited herein, Service Provider grants SVCE a renewable, irrevocable, nonexclusive, royalty-free, and worldwide right and license for any SVCE employee, contractor, or agent, or any other individual or entity authorized by SVCE, (each, an "Authorized User") to access and use the Services. Other than any limitations otherwise described herein, Authorized Users will have no other limitations on their access to or use of the Services.

3.2 Acknowledgement of License Grant. For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that this Agreement constitutes a grant of license to use intellectual property in software form, to SVCE by Service Provider.

3.3 Changes in Number of Authorized Users. SVCE is entitled to increase or decrease the initial number of Authorized Users ("Minimum Commitment"), on an as-requested basis; provided, however, that SVCE shall maintain the Minimum Commitment unless the parties otherwise agree to adjust the Minimum Commitment. Should SVCE elect to change the number of Authorized Users, Service Provider shall reduce or increase Authorized Users specified in Exhibit A and adjust the prospective Services Fees accordingly no later than five (5) business days from SVCE's written request.

3.4 Control and Location of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of SVCE. Cloud based storage shall not be utilized without the SVCE's prior, written consent. Any and all permitted cloud storage shall be in compliance with ISO/IEC 27001 - 27017, as applicable, or successor standards thereto. Except as otherwise expressly set forth in Exhibit A, the Services (including all data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein, and all such locations shall be disclosed to SVCE annually and within thirty (30) days of the effective date of this Agreement.

3.4.1 Subcontractors. Service Provider shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without SVCE's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Service Provider's use of subcontractors

shall not relieve Service Provider of any of its duties or obligations under this Agreement.

- 3.5 Storage. The Services shall include the applicable allocation of base data storage as described in Exhibit A, if any. Service Provider shall immediately notify SVCE when SVCE has reached eighty percent (80%) of SVCE's then-current data storage maximum. Within five (5) calendar days of SVCE's request, Service Provider shall make additional data storage available to SVCE at the rates described in Exhibit A.
- 3.6 Development and Test Environments. In addition to production use of the Services, SVCE is entitled to one development and one test environment for use by Authorized Users at no additional charge. Such non-production environments shall have the same data storage and processing capacities as the production environment. Service Provider shall cooperate with SVCE's requests in managing the non-production environments such as refreshing SVCE Data upon request.
- 3.7 Documentation. The documentation for the Services ("Documentation") will accurately and completely describe the functions and features of the Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Services. SVCE shall have the right to make any number of additional copies of the Documentation at no additional charge.
- 3.8 Changes in Functionality. During the term of this Agreement, Service Provider shall not reduce or eliminate functionality in the Services. Where Service Provider has reduced or eliminated functionality in the Services, SVCE, at SVCE's sole election and in SVCE's sole determination, shall: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (b) determine the value of the reduced or eliminated functionality and Service Provider will immediately adjust the Services Fees accordingly on a prospective basis. Where Service Provider has introduced like functionality in other services, SVCE shall have an additional license and subscription right to use and access the new services, at no additional charge, with the same rights, obligations, and limitations as for the Services. Where Service Provider increases functionality in the Services, such functionality shall be provided to SVCE without any increase in the Services Fees.
- 3.9 No Effect of Click-Through Terms and Conditions. Where an Authorized User is required to "click through" or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services or this Agreement.
- 3.10 Modification of the Services. SVCE's Director of Information Technology shall be authorized to waive, in writing, any of the Service Provider's obligations with respect to the Services, where deemed to be in SVCE's best interests,

provided that no such modification shall result in any increase in the amount of the Services Fees.

- 3.11 Compliance with All Laws. Service Provider shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Service Provider shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, et seq., California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100, et seq. SVCE, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Service Provider to comply with this paragraph.

4. Service Levels.

- 4.1 Service Levels; Time is of the Essence. For the term of this Agreement, Service Provider shall provide the Services, force majeure events excepted, during the applicable Service Periods and in accordance with the applicable Service Level Standards, each as described in Exhibit A hereto. Time is of the essence in the performance of the Services.
- 4.2 Service Level Reporting. On a monthly basis, in arrears and no later than the fifteenth (15th) calendar day of the subsequent month following the reporting month, Service Provider shall provide reports to SVCE describing the performance of the Services and of Service Provider as compared to the Service Level Standards; provided, however, that a SVCE Satisfaction Service Level Survey shall be conducted by Service Provider each year on the anniversary of the Effective Date and the results shall be reported to SVCE by Service Provider no later than the fifteenth (15th) calendar day of the subsequent month following such anniversary date. The reports shall be in a form agreed-to by SVCE, and, in no case, shall contain less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the Service Level Standard; (c) the specific remedial actions Service Provider has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved; and, (d) any Performance Credit due to SVCE. Service Provider and SVCE will meet as often as shall be reasonably requested by SVCE, but no less than monthly, to review the performance of Service Provider as it relates to the Service Levels. Where Service Provider fails to provide a report for a Service Level in the applicable timeframe, the Service Level shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Service Provider shall, without charge, make SVCE's historical Service Level reports available to SVCE upon request.
- 4.3 Failure to Meet Service Level Standards. In the event Service Provider does not meet a Service Level Standard, Service Provider shall: (a) owe to SVCE any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet Service Level Standard is subsequently met. Notwithstanding the foregoing, Service Provider will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall SVCE be

required to notify Service Provider that a Performance Credit is due as a condition of payment of the same.

4.3.1 Termination for Material and Repeated Failures. SVCE shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement, and be entitled to a return of any prepaid fees where Service Provider fails to meet any Service Level Standard: (a) to such an extent that the SVCE's ability, as solely determined by SVCE, to use the Services is materially disrupted, force majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

4.4 Audit of Service Levels. No more than quarterly, SVCE or SVCE's agent shall have the right to audit Service Provider's books, records, and measurement and auditing tools to verify Service Level Standard achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to SVCE but not paid, Service Provider shall immediately owe to SVCE the applicable Performance Credit.

5. Support; Maintenance; Additional Services.

5.1 Technical Support. Service Provider shall provide the Technical Support as described in Exhibit A. The Services Fees shall be inclusive of the fees for the Technical Support.

5.2 Maintenance. Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation; (c) the Service Level Standards can be achieved; and, (d) the Services work with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, and Google Chrome Internet browsers. The Services Fees shall be inclusive of the fees for maintenance.

5.2.1 Required Notice of Maintenance. Unless as otherwise agreed to by SVCE on a case-by-case basis, Service Provider shall provide no less than thirty (30) calendar day's prior written notice to SVCE of all non-emergency maintenance to be performed on the Services, such written notice including a detailed description of all maintenance to be performed. For emergency maintenance, Service Provider shall provide as much prior notice as commercially practicable to SVCE and shall provide a detailed description of all maintenance performed no greater than one (1) calendar day following the implementation of the emergency maintenance.

5.2.2 Acceptance of Non-Emergency Maintenance. Unless as otherwise agreed to by SVCE on a case-by-case basis, for non-emergency maintenance, SVCE shall have a ten (10) business day period to

test any maintenance changes prior to Service Provider introducing such maintenance changes into production (the "Maintenance Acceptance Period"). In the event that SVCE rejects, for good cause, any maintenance changes during the Maintenance Acceptance Period, Service Provider shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if SVCE has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by SVCE and Service Provider shall be entitled to introduce the maintenance changes into production.

- 5.3 Customization / Integration Services. Service Provider shall provide the Customization / Integration Services, if any, described in Exhibit A. The Services Fees shall be inclusive of the fees for the Customization / Integration Services.
- 5.4 Training Services. Service Provider shall provide the Training Services, if any, described in Exhibit A. The Services Fees shall be inclusive of the fees for the Training Services.
6. Audit Rights of Service Provider. Service Provider shall have no right to conduct an on-premises audit of SVCE's compliance with the use of the Services. No more than once annually, Service Provider shall have the right to request from SVCE its certification of compliance with the permitted number of Authorized Users. Where the actual number of users exceeds the permitted number of Authorized Users, SVCE, at SVCE's sole election shall, within thirty (30) business days: (a) reduce the actual number of users so as to be in compliance with the permitted number of Authorized Users in which case no additional Services Fees shall be due to Service Provider; or, (b) acquire the appropriate number of Authorized Users' licenses at the rate specified in Exhibit A so as to be in compliance with the permitted number of Authorized Users.
7. Change Control Procedure. SVCE may, upon written notice, request changes to the scope of the Services under Exhibit A. If SVCE requests an increase in the scope, SVCE shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify SVCE whether or not the change has an associated cost impact. If SVCE approves, SVCE shall issue a change order, which will be executed by the Service Provider. SVCE shall have the right to decrease the scope, and the associated fees will be reduced accordingly.
8. Termination; Renewals.
 - 8.1 Termination for Convenience. Without limiting the right of a party to terminate this Agreement as provided for in this Agreement, SVCE may terminate this Agreement for convenience upon not less than thirty (30) days prior written notice to the Service Provider.
 - 8.2 Termination for Cause. Without limiting the right of a party to immediately terminate this Agreement for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar

days after written notice of the breach, the non-breaching party may terminate this Agreement for cause as of a date specified in such notice.

- 8.3 Payments upon Termination. Upon the termination of this Agreement, SVCE shall pay to Service Provider all undisputed amounts due and payable hereunder, if any, and Service Provider shall pay to SVCE all amounts due and payable hereunder, such as Performance Credits and prepaid fees, if any.
- 8.4 Return of SVCE Data. Upon the termination of this Agreement, Service Provider shall, within one (1) business day following the termination of this Agreement, provide SVCE, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), with a final extract of the SVCE Data in the format specified by SVCE. Further, Service Provider shall certify to SVCE the destruction of any SVCE Data within the possession or control of Service Provider, in accordance with Section 13.5, but such destruction shall occur only after the SVCE Data has been returned to SVCE. This Section shall survive the termination of this Agreement.
- 8.5 Renewals. Should the Services continue beyond the Initial Term, the Services Fees for the Renewal Term may be increased no more than three percent (3%) on an annualized per-user basis.
9. Transition Services. Service Provider will provide to SVCE and/or to the service provider selected by SVCE ("Successor Service Provider") assistance reasonably requested by SVCE to effect the orderly transition of the Services, in whole or in part, to SVCE or to Successor Service Provider ("Transition Services") following the termination of this Agreement, in whole or in part. The Transition Services may include: (a) developing a plan for the orderly transition of the terminated Services from Service Provider to SVCE or Successor Service Provider; (b) if required, transferring the SVCE Data to Successor Service Provider; (c) using commercially reasonable efforts to assist SVCE in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the Services; (d) using commercially reasonable efforts to make available to SVCE, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Service Provider in connection with the Services; and, (e) such other activities upon which the parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.
10. Fees; Billing. Any sum due Service Provider for the Services for which payment is not otherwise specified shall be due and payable thirty (30) business days after receipt by SVCE of an invoice from Service Provider.
- 10.1 Billing Procedures. Service Provider shall bill to SVCE the sums due pursuant to Exhibit A by Service Provider's invoice, which shall contain: (a) SVCE's purchase order number, if any, and Service Provider's invoice number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d); taxes, if any; (e); any Performance Credits or other credits; and, (f) total amount due. Service Provider shall forward invoices in hardcopy format to [SVCE Accounts Payable Address].

- 10.2 Taxes. Service Provider represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Service Provider agrees that SVCE is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Service Provider. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Service Provider.
- 10.3 Credits. Any amounts due to SVCE, such as a Performance Credit, from Service Provider may be applied by SVCE, at the sole election of SVCE, against any current or future fees due to Service Provider. Any such amounts that are not so applied by SVCE shall be paid to SVCE by Service Provider within thirty (30) calendar days following SVCE's request. This Section shall survive the termination of this Agreement.
- 10.4 Non-binding Terms. Any terms and conditions included in a Service Provider invoice shall be deemed to be solely for the convenience of the Service Provider, and no such term or condition shall be binding upon the SVCE.
- 10.5 Auditable Records. Service Provider shall maintain accurate records of all fees billable to, and payments made by, SVCE in a format that will permit audit by SVCE for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of Service Provider shall survive the termination of this Agreement. For the term of this Agreement, upon SVCE's written request, Service Provider shall provide SVCE with a copy of its annual American Institute of Certified Public Accountants Service Organization Control (SOC) 1 type 2 report and SOC 2 type 2 report (for all Trust Services Principles).
- 10.6 Billing Reviews by Third-Parties. For purposes of determining the competitiveness and appropriateness of fees charged to SVCE by Service Provider, SVCE is entitled to disclose to a third-party this Agreement, and any other data pertaining to fees paid or payable by SVCE to Service Provider.
- 10.7 No Suspension of Services. Service Provider shall not suspend any part of the Services where: (a) SVCE is reasonably disputing any amount due to Service Provider; or, (b) any unpaid but undisputed amount due to Service Provider is less than ninety (90) business days in arrears.
11. Representations and Warranties.
- 11.1 Mutual. SVCE and Service Provider represent and warrant that:
- 11.1.1 it is a public entity or business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
- 11.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
- 11.1.3 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against

it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;

11.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,

11.1.5 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

11.2 By Service Provider. Service Provider represents and warrants that:

11.2.1 it is in the business of providing the Services;

11.2.2 the Services are fit for the ordinary purposes for which they will be used;

11.2.3 it is possessed of superior knowledge with respect to the Services;

11.2.4 it acknowledges that SVCE is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to SVCE;

11.2.5 it knows the particular purpose for which the Services are required by SVCE;

11.2.6 it is the lawful licensee or owner of the Services (excluding any SVCE Data therein) and has all the necessary rights in the Services to grant the use of the Services to SVCE;

11.2.7 the Services and any other work performed by Service Provider hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement;

11.2.8 it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of this Agreement;

- 11.2.9 it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards;
- 11.2.10 it will use its best efforts to ensure that no computer viruses, worms, malware, or similar items (collectively, a "Virus") are introduced into SVCE's computing and network environment by the Services, and that, where it transfers a Virus to SVCE through the Services, it shall reimburse SVCE the actual cost incurred by SVCE to remove or recover from the Virus, including the costs of persons employed by SVCE to perform such services;
- 11.2.11 the Services are free of any mechanism which may disable the Services and Service Provider warrants that no loss of SVCE Data will result from such items if present in the Services;
- 11.2.12 in the case of SVCE's reasonable dispute of any Service Provider invoice, it shall not withhold the performance of Services, including, without limitation, access and use of the Services, Technical Support, Maintenance, and extract of SVCE Data; and,
- 11.2.13 the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation.

12. SVCE Data.

- 12.1 Ownership. SVCE's data ("SVCE Data," which shall also be known and treated by Service Provider as Confidential Information) shall include: (a) SVCE's and/or SVCE employees' data collected, accessed, used, processed, stored, or generated as the result of the SVCE's use of the Services; and, (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the use of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed herein. Except where subject to a third party's intellectual property rights, all SVCE Data is and shall remain the sole and exclusive property of SVCE and all right, title, and interest in the same belongs to SVCE. This Section shall survive the termination of this Agreement.
- 12.2 Service Provider Use of SVCE Data. Service Provider is provided a limited license to access SVCE Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display SVCE Data only to the extent necessary in the providing of the Services. Service Provider shall: (a) keep and maintain SVCE Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose SVCE Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, and applicable law; (c)

allow access to SVCE Data only to those employees of Service Provider who are directly involved with and responsible for providing the Services; and, (d) not use, sell, rent, transfer, distribute, or otherwise disclose or make available SVCE Data for Service Provider's own purposes or for the benefit of anyone other than SVCE without SVCE's prior written consent. This Section shall survive the termination of this Agreement.

- 12.3 Access to, and Extraction of SVCE Data. SVCE shall have full and complete access to, and ability to download, its SVCE Data 24 hours per day, 7 days per week, except during authorized periods of maintenance by Service Provider. Further, Service Provider shall, within one (1) business day of SVCE's request, provide SVCE, without charge and without any conditions or contingencies whatsoever (including, but not limited to, the payment of any fees due to Service Provider), an extract of the SVCE Data in the format specified by SVCE. In the event SVCE gives Service Provider written notice of a "litigation hold", then as to all data identified in such notice, Service Provider shall, at no additional cost to SVCE, isolate and preserve all such data pending receipt of further direction from the SVCE.
- 12.4 Backup and Recovery of SVCE Data. As a part of the Services, Service Provider is responsible for maintaining a backup of SVCE Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in Exhibit A, Service Provider shall maintain a contemporaneous backup of SVCE Data that can be recovered within two (2) hours at any point in time. Additionally, Service Provider shall store a backup of SVCE Data in an off-site (but within the continental United States) "hardened" facility no less than daily, maintaining the security of SVCE Data, the security requirements of which are further described herein. Any backups of SVCE Data shall not be considered in calculating storage used by SVCE.
- 12.5 Loss or Unauthorized Access to Data. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of SVCE Data or the physical, technical, administrative, or organizational safeguards put in place by Service Provider that relate to the protection of the security, confidentiality, or integrity of SVCE Data, Service Provider shall, as applicable: (a) notify SVCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with SVCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by SVCE; (c) in the case of PII, at SVCE's sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse SVCE for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any

other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Service Provider's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless SVCE for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from SVCE in connection with the occurrence; (g) be responsible for recreating lost SVCE Data in the manner and on the schedule set by SVCE without charge to SVCE; (h) provide to SVCE a detailed plan within ten (10) calendar days of the occurrence describing the measures Service Provider will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at SVCE's request, provide to SVCE a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by SVCE, which shall be executed by Service Provider and may be relied upon by SVCE as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Service Provider's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Service Provider has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Service Provider. This Section shall survive the termination of this Agreement.

13. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

- 13.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. Except for electric and gas usage information provided to Service Provider pursuant to this Agreement, the term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Agreement, in all cases and for all matters, SVCE Data shall be deemed to be Confidential Information.

- 13.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement, or as required by law. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.
- 13.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person. It is understood that SVCE is subject to the California Public Records Act (Gov. Code § 6250 *et seq.*). If a request under the California Public Records Act is made to view Service Provider's Confidential Information, SVCE shall notify Service Provider of the request and the date that such records will be released to the requester unless Service Provider obtains a court order enjoining that disclosure. If Service Provider fails to obtain a court order enjoining that disclosure, SVCE will release the requested information on the date specified.
- 13.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of SVCE, at the sole election of SVCE, the immediate termination, without liability to SVCE, of this Agreement.
- 13.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement or an Exhibit A, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which is in such party's possession, custody, or control; provided, however, that Service Provider shall return SVCE Data to SVCE following the timeframe and procedure described further in this Agreement. Should Service Provider or SVCE determine that the return of any SVCE Data or non-SVCE Data Confidential Information is not feasible, Service Provider shall destroy the data comprising such Confidential Information in compliance with the most current version of NIST standard SP800-88, or other standard acceptable to the SVCE, and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.
14. Data Privacy and Information Security.

- 14.1 Undertaking by Service Provider. Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing, maintaining, and providing a written description to SVCE of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the SVCE Data; (b) protect against any anticipated threats or hazards to the security or integrity of the SVCE Data; (c) protect against unauthorized disclosure, access to, or use of the SVCE Data; (d) ensure the proper disposal of SVCE Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider's data privacy and information security program used to protect SVCE Data be less stringent than the safeguards used by Service Provider for its own data.

If the Services include handling credit card information, then the Service Provider shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Service Provider agrees and warrants that it is responsible for the security of "cardholder data" that Service Provider possesses, stores, processes or transmits on behalf of the SVCE, and for any impact on the security of SVCE's cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the Services.

- 14.2 Audit by Service Provider. No less than annually, Service Provider shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to SVCE. The required audit shall be a SAS-70 (or successor standard) compliant audit, and Service Provider shall provide the audit findings in the form of an SAS-70 Type II report.
- 14.3 Right of Audit by SVCE. Without limiting any other audit rights of SVCE, SVCE shall have the right to review Service Provider's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the providing of the Services, on an ongoing basis from time to time and without notice, SVCE, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Service Provider's data privacy and information security program. In lieu of an on-site audit, upon request by SVCE, Service Provider agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by SVCE regarding Service Provider's data privacy and information security program.
- 14.4 Audit Findings. Service Provider shall implement any required safeguards as identified by SVCE or by any audit of Service Provider's data privacy and information security program.
- 14.5 Pattern of Violations. It shall be considered a material breach of this Agreement if Service Provider engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Service Provider understands that if SVCE finds that Service Provider is engaged in a pattern or practice of

accessing, storing, using, or disclosing Confidential Information in violation of this Agreement SVCE shall promptly cease all disclosures of Confidential Information to Service Provider. Service Provider further understands that if SVCE receives a customer complaint about Service Provider's misuse of data or other violation of the Disclosure Provisions, SVCE shall promptly cease disclosing that customer's information to Service Provider and shall notify the California Public Utilities Commission ("CPUC") of the complaint.

14.6 CPUC Compliance. Service Provider shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.

14.7 Injunction, Specific Performance or Such Other Relief. Service Provider acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to SVCE and/or SVCE Customers, the amount of which may be difficult to assess. Accordingly, Service Provider hereby confirms that the SVCE shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Service Provider or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the SVCE, in law or equity.

14.8 SVCE's Right to Termination for Deficiencies. SVCE reserves the right, at its sole election, to immediately terminate this Agreement without limitation and without liability if SVCE reasonably determines that Service Provider fails or has failed to meet its obligations under this Section.

15. Proprietary Rights.

15.1 Pre-existing Materials. SVCE acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.

15.2 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.

15.3 The provisions of this Section shall survive the termination of this Agreement.

16. Indemnification; Limitation of Liability; Insurance.

16.1 General Indemnification. Service Provider agrees to indemnify, defend, and hold harmless SVCE and its elected officials, officers, directors, agents, attorneys and employees (each, an "Indemnitee") from and against any and

all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a "Claim," and collectively, the "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Service Provider, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of Service Provider; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (d) any destruction, or unauthorized access, use, or theft of SVCE Data (collectively, "cyber theft") or, (e) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the sole negligence or willful misconduct of an Indemnitee.

- 16.2 Proprietary Rights Indemnification. Service Provider agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services allegedly or actually infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Service Provider is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that SVCE is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then Service Provider shall, at its expense: (a) obtain for SVCE the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by SVCE; or, (c) in the event that Service Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Service Provider shall reimburse to SVCE any prepaid fees and the full cost associated with any Transition Services.
- 16.3 Indemnification Procedures. Promptly after receipt by SVCE of a threat, notice, or filing of any Claim against an Indemnitee, SVCE shall give notice thereof to Service Provider, provided that failure to give or delay in giving such notice shall not relieve Service Provider of any liability it may have to the Indemnitee except to the extent that Service Provider demonstrates that the defense of the Claim is prejudiced thereby. Service Provider shall have sole control of the defense and of all negotiations for settlement of a Claim and SVCE shall not independently defend or respond to a Claim; provided, however, that: (a) SVCE may defend or respond to a Claim, at Service Provider's expense, if SVCE's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee; and, (b) SVCE shall have the right, at its own expense, to monitor Service Provider's defense of a Claim. At Service Provider's request, SVCE shall reasonably cooperate with Service Provider in

defending against or settling a Claim; provided, however, that Service Provider shall reimburse SVCE for all reasonable out-of-pocket costs incurred by SVCE (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.

- 16.4 Third-Party Beneficiaries. Nothing, express or implied, in this Agreement is intended to benefit, or to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor Indemnitees.
- 16.5 Insurance. Unless otherwise approved in writing by SVCE's risk manager, Service Provider shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of Service Provider, pursuant to this Agreement: commercial general liability (\$1,000,000 per occurrence, \$2,000,000 aggregate); excess liability (\$2,000,000 per occurrence, \$2,000,000 aggregate); workers' compensation (statutory limits) and employers' liability (\$500,000 per accident); cyber liability (\$5,000,000 per occurrence) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of SVCE Data; (ii) data breach including theft, destruction, and/or unauthorized use of SVCE Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of SVCE Data; and professional liability (\$1,000,000 per occurrence, \$1,000,000 aggregate). Any of the foregoing policy limits shall be subject to modification by the SVCE's risk manager upon thirty (30) days prior, written notice to Service Provider, and at any time prior to commencement of the Services.

The Indemnitees shall be named as additional insureds in the commercial general, cyber, and excess liability policies which shall contain standard cross liability clauses. Service Provider shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Service Provider waives all rights of subrogation with respect to said policies. Such policies shall require that SVCE be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. SVCE shall have the right to request an adjustment of the limits of liability for commercial general, cyber, and excess liability, and/or professional liability insurance as Service Provider's exposure to SVCE increases. Service Provider shall provide SVCE with certificates of insurance and original endorsements, evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide SVCE with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.

17. General.

- 17.1 Relationship between SVCE and Service Provider. Service Provider represents and warrants that it is an independent contractor with no authority to contract for SVCE or in any way to bind or to commit SVCE to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of

SVCE. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of SVCE. In recognition of Service Provider's status as an independent contractor, SVCE shall carry no Workers' Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider's agents or staff, if any. SVCE shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of SVCE.

- 17.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America. Service Provider hereby consents and submits to the jurisdiction and forum of the state and federal courts in the County of Santa Clara, State of California, in all questions and controversies arising out of this Agreement.
- 17.3 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.
- 17.4 Compliance with Laws; SVCE Policies and Procedures. Service Provider agrees to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. Service Provider shall comply with SVCE policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider.
- 17.5 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will cooperate with any SVCE supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to SVCE, including, without limitation, the Successor Service Provider. Service Provider agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.
- 17.6 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable

control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Service Provider from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of SVCE Data. In no event shall any of the following constitute a force majeure event: (a) failure, inadequate performance, or unavailability of Service Provider's subcontractors, if any; or, (b) configuration changes, other changes, Viruses, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for SVCE to access or use the Services. Within thirty (30) calendar days following the Effective Date and on an annual basis thereafter until the termination of this Agreement, Service Provider shall provide its then-current business continuity plan ("Business Continuity Plan") to SVCE upon SVCE's request. The Business Continuity Plan shall include: (a) Services and SVCE Data backup and recovery procedures, including procedures and resources for disaster recovery; (b) fail-over procedures; and, (c) how Service Provider will interact with its business continuity suppliers, if any. Service Provider shall test its Business Continuity Plan on an annual basis until the termination of this Agreement and shall provide the test results to SVCE upon SVCE's request.

- 17.7 Advertising and Publicity. Service Provider shall not refer to SVCE directly or indirectly in any advertisement, news release, or publication, or use any SVCE logo, seal or mark, without prior written approval from SVCE.
- 17.8 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 17.9 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.
- 17.10 Assignment of Agreement. This Agreement and the obligations of Service Provider hereunder are personal to Service Provider. Neither Service Provider nor any successor, receiver, or assignee of Service Provider shall directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of Service Provider's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of SVCE. In the case of an assignment by Service Provider, Service Provider represents and warrants that it has all requisite rights and power to transfer any agreements

or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services. SVCE, at SVCE's sole election, may assign any and all of its rights and obligations under this Agreement to any company that succeeds to substantially all of SVCE's business.

- 17.11 Time is of the Essence. Time is of the essence in every provision of this Agreement in which time for performance is a factor.
- 17.12 Counterparts; Facsimile/PDF/Electronic Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.
- 17.13 Entire Agreement. This Agreement and any and all attached exhibits, each of which is incorporated by reference herein, constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between SVCE and Service Provider as to the subject matter hereof. No representation or promise not expressly set forth herein shall be binding. The provisions of this Agreement shall govern over any inconsistent or conflicting provisions contained in any exhibit hereto. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- 17.14 Cumulative Remedies. All rights and remedies of SVCE herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.
- 17.15 No Recourse against Constituent Members of Authority. SVCE is organized as a Joint Powers SVCE in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. SVCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Service Provider shall have no rights and shall not make any claims, take any actions or assert any remedies against any of SVCE's constituent members in connection with this Agreement.
- 17.16 Non-Discrimination. In the performance of this Agreement, Service Provider, and any subcontractor of Service Provider shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Service Provider shall have responsibility for compliance with this Section.

- 17.17 Conflict Of Interest. Service Provider warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Service Provider and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Service Provider's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Service Provider may perform similar services for other clients, but Service Provider and its officers, employees, associates and subcontractors shall not, without the SVCE Representative's prior written approval, perform work for another person or entity for whom Service Provider is not currently performing work that would require Service Provider or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Service Provider shall incorporate a clause substantially similar to this Section into any subcontract that Service Provider executes in connection with the performance of this Agreement. Service Provider understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Service Provider to make certain governmental decisions or serve in a staff SVCE, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.
- 17.18 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 17.19 Final Payment Acceptance Constitutes Release. The acceptance by Service Provider of the final payment made under this Agreement shall operate as and be a release of SVCE from all claims and liabilities for compensation to Service Provider for anything done, furnished or relating to Service Provider's work or services. Acceptance of payment shall be any negotiation of SVCE's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by SVCE shall not constitute, nor be deemed, a release of the responsibility and liability of Service Provider, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by SVCE for any defect or error in the work prepared by Service Provider, its employees, subcontractors and agents.
- 17.20 SVCE's Rights to Employ Other Consultants. SVCE reserves the right to employ other consultants in connection with the subject matter of the Services.
- 17.21 Inserted Provisions. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly

inserted, the Agreement shall be amended to make such insertion on application by either party.

17.22 Captions and Terms. The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

17.23 Exhibits. The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Service Provider's proposal, the provisions of this Agreement shall control.

17.24 Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

Executed on the dates set forth below by the undersigned authorized representative of SVCE and Service Provider to be effective as of the Effective Date.

SILICON VALLEY CLEAN ENERGY (SVCE)

By:

Name:

Title:

Date:

Address for Notice:

[SERVICE PROVIDER NAME] (SERVICE PROVIDER)

By:

Name:

Title:

Date:

Address for Notice:

EXHIBIT A

STATEMENT OF SERVICES, SUPPORT, AND SERVICE LEVEL AGREEMENT

This Exhibit A - Statement of Services and Service Level Agreement shall be incorporated in and governed by the terms of that certain Master Software as a Service Agreement by and between **SILICON VALLEY CLEAN ENERGY** ("SVCE") and **[SERVICE PROVIDER NAME]** ("Service Provider") dated **[Effective Date]**, ("Agreement"). In the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit A, the provisions contained in the Agreement shall prevail.

Services Description. **[Enter a detailed description of the Services that will be provided. As appropriate, documents describing the Services can be "attached hereto and incorporated herein."]**

Start Date and End Date. These dates represent the Initial Term of this Agreement. **[Indicate the Start Date and End Date of the Services. If the Services are not required until after Customization / Integration Services, Training Services, etc. are completed, be sure to indicate that the Start Date for the Services may be later than the Start Date for, for example, the Customization / Integration Services.]**

Authorized Users and Services Fees. **[Indicate the initial number of Authorized Users and rates. Additionally, describe "tiers" or numbers and corresponding rates to purchase additional Authorized Users. Be clear as to the type of pricing model; for example, scalable pricing, module pricing, per seat pricing, usage-based pricing. This Agreement assumes a scalable and elastic per-user pricing model. Also include the billing frequency, such as monthly, quarterly, or annually.]**

Storage Threshold(s). **[Describe the initial data storage provided by the Service Provider and any additional "tiers" of storage.]**

Storage Fees. **[Describe Storage Fees, if any, for the initial data storage provided by the Service Provider as well as for any additional "tiers" of storage.]**

Technical Support Description. **[Modify this section as necessary. The Following Technical Description is a template for starting and can be modified or removed depending on the vendor agreement.]**

Service Provider will provide to SVCE telephone and email support ("Technical Support") twenty-four (24) hours per day, seven (7) days per week, three-hundred-sixty-five (365) days per year. Technical Support will include any research and resolution activity performed by Service Provider.

- a) Request for Technical Support. Authorized Users will make Technical Support requests by calling or emailing Service Provider's Technical Support staff or by submitting a request via Service Provider's customer service web portal. The Technical Support staff shall assign to the request the Problem Severity Level (as defined herein) indicated by the requestor.

- b) Problem Severity Levels 1 and 2 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Service Provider shall confirm to the requestor receipt of the request by Service Provider. If a Problem Severity Level 1 or 2 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, Service Provider will: (a) immediately escalate the request to Service Provider's management; (b) take and continue to take the actions which will most expeditiously resolve the request; (c) provide a hourly report to the requestor of the steps taken and to be taken to resolve the request, the progress to correct, and the estimated time of correction until the request is resolved; and, (d) every [Time Duration], provide increasing levels of technical expertise and Service Provider management involvement in finding a solution to the request until it has been resolved.
- c) Problem Severity Levels 3 and 4 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Service Provider shall confirm to the requestor receipt of the request by Service Provider. If a Problem Severity Level 3 or 4 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, at the sole election of requestor: (a) Service Provider will work continuously to resolve the request; or, (b) requestor and Service Provider will mutually agree upon a schedule within which to resolve the request.

Technical Support Problem Severity Levels

- a) Problem Severity Level 1.
 - 1) Description. This Problem Severity Level is associated with: (a) Services, as a whole, are non-functional or are not accessible; (b) unauthorized exposure of all or part of SVCE Data; or, (c) loss or corruption of all or part of SVCE Data.
 - 2) Request Response Time. 30 minutes.
 - 3) Request Resolution Time. 2 hours.
- b) Problem Severity Level 2.
 - 1) Description. This Problem Severity Level is associated with significant and / or ongoing interruption of an Authorized User's use of a critical function (as determined by the Authorized User) of the Services and for which no acceptable (as determined by the Authorized User) work-around is available.
 - 2) Request Response Time. 1 hour.
 - 3) Request Resolution Time. 4 hours.
- c) Problem Severity Level 3.
 - 1) Description. This Problem Severity Level is associated with: (a) minor and / or limited interruption of an Authorized User's use of a non-critical function (as determined by the Authorized User) of the Services; or, (b) problems which are not included in Problem Severity Levels 1 or 2.

- 2) Request Response Time. 8 hours.
 - 3) Request Resolution Time. 24 hours.
- d) Problem Severity Level 4.
- 1) Description. This Problem Severity Level is associated with: (a) general questions pertaining to the Services; or, (b) problems which are not included in Problem Severity Levels 1, 2, or 3.
 - 2) Request Response Time. 8 hours.
 - 3) Request Resolution Time. 48 hours.

Customization / Integration Services. [Describe all Customization / Integration Services, if any, to be provided by the Service Provider to enable production use of the Services.]

Training Services. [Describe all Training Services, if any, to be provided by the Service Provider. Include any type of training or method of delivery, including documentation or other materials, web- or computer-based, instructor-led, train-the-trainer, etc.]

Service Levels.

- a) Availability Service Level.
 - 1) Definitions.
 - (a) "Actual Uptime" shall mean the total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.
 - (b) "Maintenance Window" shall mean the total minutes in the reporting month represented by the following day(s) and time(s) during which Service Provider shall maintain the Services: [Day(s) and Time(s)].
 - (c) "Scheduled Downtime" shall mean the total minutes in the reporting month represented by the Maintenance Window.
 - (d) "Scheduled Uptime" shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.
 - 2) Service Level Standard. Services will be available to Authorized Users for normal use 100% of the Scheduled Uptime.
 - 3) Calculation. $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$ (as calculated by rounding to the second decimal point)
 - 4) Performance Credit.
 - (a) Where Percentage Uptime is greater than 99.98%, no Performance Credit will be due to SVCE.
 - (b) Where Percentage Uptime is equal to or less than 99.98%, SVCE shall be due a Performance Credit in the amount of 10% of the Services Fees (as

calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.

5) Example Calculation.

- (a) Assuming reporting month is February 2012 (41,760 minutes).
- (b) Assuming a Maintenance Window of Sundays from Midnight to 4:00 a.m. Eastern Standard Time (equals Scheduled Downtime of 960 minutes).
- (c) Scheduled Uptime equals 40,800 minutes (total minutes of 41,760 in February 2012 less 960 minutes of Scheduled Downtime).
- (d) Assuming Actual Uptime of 40,000 minutes. A Percentage Uptime is calculated as follows: $(40,000 / 40,800) * 100 = 98.04\%$.
- (e) The threshold of 99.99% less the Percentage Uptime of 98.04% = 1.95%.
- (f) The difference is greater than a 1% reduction but is less than a 2% reduction; therefore, SVCE is due 10% of the Services Fees as a Performance Credit.

b) Services Response Time Service Level.

1) Definition(s).

- (a) "Response Time" shall mean the interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.
- (b) "Total Transactions" shall mean the total of Transactions occurring in the reporting month.
- (c) "Transaction" or "Transactions" shall mean Services web page loads, Services web page displays, and Authorized User Services requests.

2) Service Level Standard. Transactions will have a Response Time of 1 second or less 100% of the time each reporting month during the periods for which the Services are available.

3) Calculation. $((\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions}) * 100 = \text{Percentage Response Time}$ (as calculated by rounding to the second decimal point).

4) Performance Credit.

- (a) Where Percentage Response Time is greater than 95.00%, no Performance Credit will be due to SVCE.
- (b) Where Percentage Response Time is equal to or less than 95.00%, SVCE shall be due a Performance Credit in the amount of 1% of the Services Fees (as

calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.

5) Example Calculation.

(a) Total Transactions during the reporting month equal 42,078.

(b) Total Transactions failing the Standard of 100% equal 2,163.

(c) Percentage Response Time is calculated as follows: $((42,078 - 2,163) / 42,078) * 100 = 94.86\%$

(d) The threshold of 95.01% less the Percentage Response Time of 94.86% = .15%. The difference is less than a 1% reduction; therefore, SVCE is not due a Performance Credit.

c) Technical Support Problem Response Service Level.

1) Definition. "Total Problems" shall mean the total of problems occurring in the reporting month.

2) Service Level Standard. Problems shall be confirmed as received by Service Provider 100% of the time each reporting month, in accordance with the Request Response Time associated with the Problem Severity Level.

3) Calculation. $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Response}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each Problem Severity Level.

4) Performance Credit.

(a) Problem Severity Level 1 – 2.

(1) Where Percentage Problem Response is greater than 99.00%, no Performance Credit will be due to SVCE.

(2) Where Percentage Problem Response is equal to or less than 99.00%, SVCE shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

(b) Problem Severity Level 3 – 4.

(1) Where Percentage Problem Response is greater than 90.00%, no Performance Credit will be due to SVCE.

(2) Where Percentage Problem Response is equal to or less than 90.00%, SVCE shall be due a Performance Credit in the amount of .5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

5) Example Calculation (Using Problem Severity Level 1 – 2).

- (a) Total Problems during the reporting month equal 68.
- (b) Total Problems failing the Standard of 100% equal 3.
- (c) Percentage Problem Response is calculated as follows: $((68 - 3) / 68) * 100 = 95.59\%$
- (d) The threshold of 99.01% less the Percentage Problem Response of 95.59% = 3.42%. The difference is greater than a 3% reduction but is less than a 4% reduction; therefore, SVCE is due 3% of the Services Fees as a Performance Credit.

d) Technical Support Problem Resolution Service Level.

- 1) Definition. "Total Problems" shall mean the total of problems occurring in the reporting month.
- 2) Service Level Standard. Problems shall be resolved by Service Provider 100% of the time each reporting month, in accordance with the Request Resolution Time associated with the Problem Severity Level.
- 3) Calculation. $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Resolution}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each Problem Severity Level.

4) Performance Credit.

(a) Problem Severity Level 1 – 2.

- (1) Where Percentage Problem Resolution is greater than 99.00%, no Performance Credit will be due to SVCE.
- (2) Where Percentage Problem Resolution is equal to or less than 99.00%, SVCE shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Resolution.

(b) Problem Severity Level 3 – 4.

- (1) Where Percentage Problem Resolution is greater than 90.00%, no Performance Credit will be due to SVCE.
- (2) Where Percentage Problem Resolution is equal to or less than 90.00%, SVCE shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Resolution.

5) Example Calculation (Using Problem Severity Level 3 – 4).

- (a) Total Problems during the reporting month equal 17.
- (b) Total Problems failing the Standard of 100% equal 2.

(c) Percentage Problem Resolution is calculated as follows: $((17 - 2) / 17) * 100 = 88.24\%$

(d) The threshold of 90.01% less the Percentage Problem Resolution of 88.24% = 1.77%. The difference is greater than a 1% reduction but is less than a 2% reduction; therefore, SVCE is due 1% of the Services Fees as a Performance Credit.