



## AGGREGATOR MASTER SERVICE AGREEMENT

This Aggregator Master Service Agreement (“Agreement”), by and between **City of Rochelle** (“Aggregator”) and **Enerwise Global Technologies, LLC d/b/a CPower** (“Provider” or “CPower”), also individually and collectively referred to as a “Party” or “Parties”, is effective as of the last signature date set forth below (the “Effective Date”) and will remain in effect until terminated in accordance with Section 8 below or until such time as the last Addendum entered into by the Parties terminates (the “Term”).

### TERMS AND CONDITIONS

#### Section 1 – General

Provider, as an authorized curtailment service provider, is hereby designated to facilitate and manage participation of Aggregator’s customers (“Customer”) in energy management programs for the facilities listed on the accompanying Addenda for the Term of this Agreement and the applicable Addenda. Terms used and not otherwise defined shall have the meaning given them in the respective Regional Transmission Organizations (“RTO”), Independent System Operators (“ISO”) or utility’s governing tariff, program rules, and/or covenants.

Aggregator attests it controls, directly or indirectly, certain commercial and/or industrial-scale energy generation and/or electrical load systems. Aggregator represents it has entered into a contract with Customer which provides Aggregator with the exclusive right to utilize distributed generation and/or electrical load systems at certain facilities and holds rights to the capacity of same, including the associated utility accounts. The contract between Aggregator and Customer further provides Aggregator with the right to enroll Customer utility accounts in certain energy management programs and the right to allow the management of participation in said programs. If Aggregator does not hold such aforesaid rights from Customer, Aggregator will provide Provider with a signed host acknowledgement letter substantially similar to the letter attached hereto as Exhibit A.

Exhibit B: PJM Addendum for Emergency Capacity Demand Response

#### Section 2 –Payments

Payments from programs result from active program participation as well as satisfactory compliance with all related program rules and the terms of this Agreement and Addenda. Provider shall pay Aggregator as defined herein and in the applicable Addenda. Aggregator acknowledges that all program, market rules, earnings and/or payment terms are subject to change in the event program rules, market rules and/or other applicable laws change. When permitted by applicable program rules, Provider retains the right to reduce offers submitted by Aggregator when deemed prudent for risk mitigation, which may affect Aggregator’s payments hereunder. Provider shall not be responsible for compensating any Customer. Provider shall not be responsible for any errors which the applicable program administrator may make in calculating payments to be made under this Agreement unless due to its own act or omission.

#### Section 3 –Obligations and Underperformance

Aggregator shall provide a Letter of Authorization or appropriate RTO/ISO or utility approval form authorizing the energy supplier or utility to provide to Provider information required to register Customer in the applicable programs (including billing and other relevant utility data). Registration with Customer’s RTO or ISO requires utility data and account numbers. Aggregator shall provide Provider with copies of utility bills as requested for registration. Aggregator will inform Provider in the event of any change in utility information within forty-five (45) days of the effective date of the change.

Participation in programs is subject to acceptance of the registration by the applicable RTO/ISO or utility. Further, participation in programs is subject to compliance with RTO/ISO or utility rules for all such program(s), as well as compliance with the commitment to curtail in accordance with this Agreement and the applicable Addenda. Where permitted by program rules, Provider has sole discretion to suspend program participation or withdraw active registration/nomination if Aggregator fails to comply with the foregoing. If Provider cancels program participation in accordance with the applicable program rules, Aggregator will forfeit any unpaid amounts as of the date of such cancellation, regardless of partial performance.

If distributed generation or back-up generator(s) are used for program participation, it is the responsibility of Aggregator to adhere to all local, state and federal requirements, environmental laws, regulations, use and zoning permits, operational specifications and maintenance requirements of its generator(s). Aggregator must provide Provider generator information



including, but not limited to, manufacture, make, model, serial number, manufacture date, installation date, and emission certification. Upon request, Aggregator must provide Provider with copies of all relevant permits or proof of compliance required to utilize a generator. Failure of Aggregator to provide copies of such permits may result in an adjustment to program registration, cancellation of program registration or Termination for Cause (as defined below) of the Agreement by Provider. Further, and notwithstanding anything in this Agreement to the contrary, Aggregator will indemnify Provider against any liabilities, claims, expenses, or damages based upon the ownership or use of its distributed generation or back-up generators.

Aggregator will notify Provider as soon as possible in the event it becomes aware that it is, or will become, unable to provide its committed curtailment amount. Where permitted by the applicable program rules, Provider has the right, but not the obligation, to satisfy any underperformance.

In the event the RTO/ISO or utility assesses any penalties and/or costs against Provider pursuant to the applicable program rules resulting from Aggregator or Customer's actions or inaction hereunder, then Provider will be entitled to deduct any such penalties and/or costs from Aggregator's current or future program payments to satisfy such penalties or costs in full with no 'out of pocket' payments necessary from Aggregator in excess of such current or future program payments.

#### **Section 4 - Indemnification and Limitations of Liability**

Provider shall defend, indemnify and hold harmless Aggregator against any and all damages, losses, liabilities, judgments, awards and costs (including reasonable attorneys' fees and expenses) (collectively, "**Loss**") in any third-party claim, action, lawsuit or proceeding (individually and collectively, "**Claim**") arising out of an allegation that Provider's negligent actions or omissions caused a Loss. Provided, however, that the foregoing obligation to indemnify will not apply if Aggregator or Customer's actions or inactions were in any way a contributing factor to the **Claim** (by way of example only, if a **Claim** is based, in part, on underperformance, Provider shall have no obligation to indemnify Aggregator). Aggregator shall defend, indemnify and hold harmless Provider against any **Loss** in any **Claim** arising out of an allegation that Aggregator or Customer's negligent actions or omissions caused a **Loss**. Provided, however, that the foregoing obligation to indemnify will not apply if Provider's actions or inactions were in any way a contributing factor to the **Claim**.

Neither Party shall be liable for any special, indirect or consequential damages arising in any manner from its performance under this Agreement. The total liability of either Party hereunder other than with respect to indemnity **Claims**, will be limited to the actual dollar amount that was paid directly to Aggregator pursuant to the applicable Customer and Addendum at issue in the year prior to which the claim was made (by way of example only, if the claim is made in June of 2016, the total amount of liability of either Party cannot exceed the actual dollar amount paid to Aggregator pursuant to the applicable Customer and Addendum at issue in 2015). If the claim arises in the first year of the Agreement, then the total liability is limited to the actual dollar amount that has been paid directly to Aggregator pursuant to the applicable Customer and Addendum at issue as of the date the claim is made.

#### **Section 5 – Confidentiality**

The Parties may provide (the "Disclosing Party") proprietary information ("Proprietary Information") to the other (the "Recipient") during the Term of this Agreement. The Parties agree to treat such Proprietary Information as confidential and proprietary and to protect the disclosure of such Proprietary Information to any third-party. The Recipient will use such care with Disclosing Party's Proprietary Information as it uses to protect its own confidential information, but in no case less care than is commercially reasonable and within industry standards. Information and materials will be considered Proprietary Information regardless of the form or manner of disclosure or whether when provided it is marked "CONFIDENTIAL" or with a similar designation. Provider Proprietary Information includes, but is not limited to, any reports generated, any pricing information, and this Agreement. This Agreement imposes no obligation of confidentiality on Recipient with respect to information that: (a) was in the possession of Recipient before its receipt from the Disclosing Party, including as part of Recipient's own development process; (b) is or becomes available to the public through no fault of Recipient; or (c) is independently developed by such Recipient without reference to or use of a Disclosing Party's Proprietary Information; (d) is received by Recipient in good faith from a third party having no duty of confidentiality to the Disclosing Party or (e) is disclosed pursuant to law, regulation or lawful order or process. Provider may access and use Customer data to provide services and Provider shall have no obligation of confidentiality as it relates to providing Proprietary Information to a RTO, ISO, utility or other third party where such information is required for registration or facilitation of the program. Further, Aggregator agrees that: (i) Provider and its third-party contractors may collect and use Customer building data and related data, as long as any external use of the data is reported on an anonymous basis that does not personally identify Customer or any individual, and (ii) Provider may share any Proprietary Information with its affiliates and its and their employees, financing parties, investors, representatives and other agents, advisors and consultants.



**Section 6 – Assignment**

A Party’s prior written consent is necessary for a Party to assign any of its rights or obligations under this Agreement. The assigning Party’s prior written consent will not be unreasonably withheld. Provider, however, may transfer and assign this Agreement without Aggregator’s consent to any person or entity that is a subsidiary or affiliate of Provider, a successor to Provider, or that acquires all or any portion of the stock or assets of Provider.

**Section 7 – Interval Meter Data and Metering**

Interval meter data is a requirement in the programs. Therefore, interval meters must be installed before accepted into the applicable program. Additional information regarding metering options for specific programs is set forth in the applicable Addenda. Metering fees are subject to change.

**Section 8 – Termination**

Either Party may terminate the Agreement immediately upon the other Party’s material breach of any obligation of this Agreement, provided such breach remains uncured for a period of ten (10) days after being provided with written notice thereof (“Termination for Cause”). Provider shall also be entitled to terminate this Agreement upon ten (10) days written notice if Provider’s ability to provide services under this Agreement is negatively impacted by a regulatory change.

Customer may terminate this Agreement upon 90 days written notice and such termination will be effective at the end of the current enrolled Program Period as defined in all applicable Addenda. Customer will fulfill responsibilities as outlined herein and in accompanying Addenda until such termination is in effect.

**Section 9 – Entire Agreement**

This Agreement and applicable Addenda, Amendments, Account Schedules, added hereto constitute the entire agreement between the Parties regarding the subject matter hereof and supersedes any and all prior and contemporaneous agreements or communications with respect to such subject matter. This Agreement, the Addenda, Amendments and the Account Schedules shall not be modified in any manner unless in writing and signed by both Parties. Each of the Parties hereto waives any right to trial by jury with respect to any claim or action arising under this Agreement.

**CPower**

**City of Rochelle**

**By:**

**By:**

**Date:**

**Date:**

**Name:** Shelley Schopp

**Name:** Jeff Fiegenschuh

**Title:** Senior VP, Customer Fulfillment

**Title:** City Manager

**Address:** 1001 Fleet Street, Suite 400

**Address:** 420 N. 6<sup>th</sup> Street

**City:** Baltimore **State:** MD **Zip:** 21202

**City:** Rochelle **State:** IL **Zip:** 61068

**Phone:** 1-844-CPower1, Option 2

**Phone:** (815) 561-2000

**Email:** [contract@cpowerenergymanagement.com](mailto:contract@cpowerenergymanagement.com)  
[legal@cpowerenergymanagement.com](mailto:legal@cpowerenergymanagement.com)

**Email:** [jfiegenschuh@rochelleil.us](mailto:jfiegenschuh@rochelleil.us)

**CONTRACTUAL NOTICES:**

All notices given under this Agreement must be in writing. Notices shall be deemed given as of the day received by the addressee via messenger, courier delivery service or electronic mail and addressed to CPower and Aggregator to the individuals set forth on the signature lines above or to such other individual and address as a Party may give written notice of. Additionally, all notices sent to CPower must also be sent to **ATTN: Legal Department** to the physical address and email addresses set forth above.



## Exhibit A

### **CUSTOMER LETTER OF ACKNOWLEDGEMENT**

1. This Letter of Acknowledgment is being provided solely with respect to the UDC Account Numbers identified below. We, the undersigned entity (the "**Customer**") understand that Enerwise Global Technologies, LLC d/b/a CPower ("Provider") enrolls, and provides related services for, facilities in connection with, energy curtailment and similar programs, including, without limitation, programs administered by independent system operators and electric distribution companies ("**Program(s)**").
2. The Customer owns, or otherwise has full authority to enter into this Letter of Acknowledgment for each Account listed below. Customer provides Provider with the right to manage or allow the management of each of the Accounts' participation in the Program(s), the right to enroll each Account in Program(s) and the right to the capacity of said Accounts.
3. Customer has entered into a contract with \_\_\_\_\_ or its affiliates ("Aggregator") which provides Aggregator with the right to enroll the below listed Account(s) ("Accounts") in energy management Programs. Customer acknowledges that any compensation due under the Programs will be solely for the benefit of Aggregator and Provider and Customer agrees it will receive no compensation from Provider as a result thereof.
4. Customer acknowledges and agrees that Aggregator has entered into a Master Service Agreement and related Addenda ("Agreement") with Provider and Customer agrees to take no actions that may prevent Aggregator from meeting its Agreement obligations.
5. Customer agrees that Provider shall not be liable to Customer or any other person or entity with an interest in any Account in any way in connection with an Account's participation in a Program including, without limitation, for any personal injury or property damage to any Customer facility.
6. Customer agrees to provide such information as Provider or Aggregator may reasonably request in connection with the enrollment and participation of an Account in any Program.
7. Customer acknowledges that Provider is providing Program related services for each Account in reliance on Customer entering into this Letter of Acknowledgment and its agreement to abide by the terms and conditions of Aggregator's Agreement with Provider. Customer agrees that this Letter of Acknowledgment shall remain in full force and effect for so long as the Agreement between Aggregator and Provider remains in full force and effect, and that no amendment to this Letter of Acknowledgment shall be effective unless in writing and signed by Customer and Provider.



UDC	UDC Account Number	Service Address

**CUSTOMER**

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_

Name:

Title:

Date:



## Exhibit B

### PJM ADDENDUM FOR EMERGENCY CAPACITY DEMAND RESPONSE

This Addendum is attached hereto, and made a part hereof, the Aggregator Master Service Agreement (“Agreement”), between Aggregator and Provider. This Addendum is issued pursuant to and is governed by, the terms and conditions of the Agreement. All terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

#### 1. Definitions.

The “**Program Period**” is June 1 to May 31.

The “**Program Quarters**” are June – August, September – November, December – February, March – May.

The “**Reliability Pricing Model Clearing Price**” is the capacity rate of the PJM program option specified in the enrollment notification for the applicable Program Period determined via PJM’s Reliability Pricing Model.

The “**Capacity Payment**” is calculated as each accounts’ credited load reduction in response to events or tests, which will not exceed the committed Summer or Winter Curtailment Values, multiplied by the applicable “Reliability Pricing Model Clearing Price”, multiplied by the number of days in the Summer or Winter periods.

The “**Firm Service Level**” or “**FSL**” is the meter read level each utility account load must be at or below in order to be compliant. Summer FSL: June through October and May. Winter FSL: November through April.

The “**Peak Load Contribution**” or “**PLC**” for summer is an annual utility calculation for every electric account that averages the five (5) highest weather normalized PJM system coincident load hours that occurred on different days over the period of June 1 through September 30 of the year prior to the Program Period. For winter, it is an annual calculation for every electric account that averages the highest load hour for PJM’s five (5) peak winter days over the period of November 1 through April 30 between 6am-9pm from two years prior to the Program Period.

The “**Summer Curtailment Value**” is the estimated load curtailment amount for each electric account during an event or test and is calculated as the account’s utility assigned summer PLC divided by its capacity loss factor minus its summer FSL during the summer period of June through October, and May.

The “**Winter Curtailment Value**” is the estimated load curtailment amount for each electric account during an event or test and is calculated as the account’s calculated winter PLC divided by its capacity loss factor minus its winter FSL during the winter period of November through April.

The “**Energy Payment**” is calculated for each curtailment notification as the product of (A) PJM’s emergency energy price multiplied by (B) the kilowatt hours actually curtailed.

**2. Program – Emergency Capacity DR.** Provider agrees to facilitate and manage Aggregator participation in the Emergency Capacity Demand Response Program (“Program”) managed by PJM Interconnection LLC (“Program Administrator”) in accordance with PJM’s Open Access Transmission Tariff, as amended, (“Program Rules”). subject to Aggregator meeting all applicable Program requirements and fulfilling its obligations as set forth herein, in the Agreement and under applicable laws. Certain relevant Program Rules are set forth in PJM’s manuals, especially manuals 11, 13 and 18, and can be found at <http://www.pjm.com/documents/manuals.aspx>. Aggregator hereby represents and warrants that it and its accounts can and will comply with the Program Rules.

#### 3. Administration and Responsibilities.

- **Enrollment Notifications.** Prior to the start of the Program Period, Provider will use commercially reasonable efforts to email Aggregator an enrollment notification that will include the specific Program option and the dispatch notification lead time applicable to the electric utility accounts. This notification will also



include the proposed committed summer and winter FSL and committed Curtailment Values for each utility account. Change requests to the seasonal FSLs must be submitted via written request by Aggregator within 3 business days after receipt of the enrollment notification. Enrollment in the Program is contingent upon a successful registration with Program Administrator and Provider's ability to secure sufficient Reliability Pricing Model Commitments for the applicable Program Period as well as offsetting seasonal enrollments to achieve capacity performance aggregations.

- **Dispatch Notification and Mandatory Performance.** Aggregator understands and agrees the Program Administrator or Provider may call a test at any time. When events or tests are called, Provider will use commercially reasonable efforts to send Customer or Aggregator an email or contact via phone notifying of the event or test in accordance with Program notification requirements. For each Program Period, Aggregator's commitment is to reduce or maintain electricity consumption at or below the committed seasonal FSL value. Aggregator understands that events and tests are mandatory, unless otherwise noted in the dispatch notification, in order to be deemed compliant with its commitment, and Provider expects that upon receipt of such notification, the committed seasonal Curtailment Value based on the notification instructions in accordance with the Program Rules will be made.
- **Interval Data Requirements.** Interval load data is a Program requirement.
- **Total Meter Solution Option.** If Aggregator chooses to have a data acquisition ("DA") logger installed, Provider offers a Total Meter Solution ("TMS"). TMS Installation fees only apply if Provider installs a DA logger. Title to such metering equipment will pass to Aggregator or Customer upon installation. TMS fees will be deducted from Aggregator's DR earnings. Aggregator agrees to a recurring \$50/month fee for any DA logger previously installed by Provider for duration of the Term.  
Total Meter Solution Fee (per meter):  
Installation Fee: \$200 Monthly - 24 Months  
Maintenance Fee: \$50 Monthly
- **Contact List.** Aggregator must provide Provider with the name, email and phone numbers to be used by Provider for notification purposes upon execution of this Addendum. It is Aggregator's responsibility to keep this information current (i.e. dispatch, notification, accounting, etc.). Aggregator shall immediately notify Provider of any change to such information.
- **Utility Accounts.** Provider will provide Aggregator with the Account Confirmation Schedule which will confirm the utility accounts that will be enrolled in the Program. Aggregator will have 5 business days after receipt of the Account Confirmation Schedule to review the document and to provide Provider with any modifications. Failure to provide this information within the Provider's timeframe may prevent Provider from enrolling the utility accounts in the Program.

Aggregator and Customer are prohibited from offering the account(s) in the attached Account Confirmation Schedule into any RPM auction as an Existing DR Resource for the Term of this Addendum.

**4. Term.** The Parties commit to the period identified in the Account Confirmation Schedule and an annual extension of one (1) Program Period on the anniversary of each Program Period (together, the "Term"). Should either Party wish to terminate, written notification by the Party is required 180 days prior to the start of the next Program Period. Said termination will become effective at the end of the current Term.

**5. Payments.** For participating in the Program, Aggregator may receive from Provider both a Capacity Payment and an Energy Payment. The associated Curtailment Value for achieving the committed seasonal FSL is the maximum payment kw for the Program Period; the calculations for which are defined herein. Aggregator's payments will be adjusted for failure to provide the committed Curtailment Value for events or tests.



In addition to the payment terms set forth in the Agreement, the following shall be applicable with respect to payments under this Addendum:

Provider will pay to Aggregator 75% of the Capacity Payment and Energy Payment based on performance in response to event and test notifications.

Aggregator will receive payment sixty (60) days following the end of each Program Quarter after Provider's receipt of payment from Program Administrator.

## **CPower**

**By:**

**Date:**

**Name:** Shelley Schopp

**Title:** Senior VP, Customer Fulfillment

**Address:** 1001 Fleet Street, Suite 400

**City:** Baltimore **State:** MD **Zip:** 21202

**Phone:** 1-844-CPower1, Option 2

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[legal@cpowerenergymanagement.com](mailto:legal@cpowerenergymanagement.com)

## **City of Rochelle**

**By:**

**Date:**

**Name:** Jeff Fiegenschuh

**Title:** City Manager

**Address:** 420 N. 6<sup>th</sup> Street

**City:** Rochelle **State:** IL **Zip:** 61068

**Phone:** (815) 561-2000

**Email:** [jfiegenschuh@rochelleil.us](mailto:jfiegenschuh@rochelleil.us)





## CPOWER ACCOUNT CONFIRMATION SCHEDULE

**Company: City of Rochelle**

**PROGRAM: Emergency Capacity DR - Seasonal**

UDC	UDC Account Number	Facility Name/Store #	Service Address	Start Date	End Date	Aggregator Share %