

COMMERCIAL ENERGY SERVICES AGREEMENT



CUSTOMER INFORMATION:

Customer Name:		Authorizing Party & Title:	
Mailing Address – Street, City, State and Zip		Phone:	
		Fax:	
Customer EIN/TIN:	Email:		
Billing Address (If Different from Above):			
Billing Contact Name & Title:			
Billing Email:			
Price: Fixed: / kWh Index Adder: / kWh		Enrollment Type (Select One): Standard Switch (1-5 Business Days) Self-selected Switch (Future Date:) Move-In (for inactive meter, Date:)	
Term:	Months		

This Commercial Energy Services Agreement (“CESA”), including any Exhibits attached hereto and incorporated herein by reference, is made and entered into by and between the party identified as Customer above (“Customer”) and Pulse Power LLC (“Company”). Customer and Company may be referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, Customer is a retail electric customer receiving electricity at the meters listed on Exhibit A (“Customer Facilities”); and

WHEREAS, Company is a retail electricity provider (“REP”) certified by the Public Utility Commission of Texas (“PUCT”) as evidenced by PUCT Number 10259; and

WHEREAS, Customer wishes to designate Company as Customer’s REP for the Customer Facilities; and

WHEREAS, Company wishes to serve as the REP for the Customer Facilities, responsible for scheduling the delivery of electricity and ancillary services (“Services”) to the Customer Facilities under the terms of this CESA; and

WHEREAS, by executing this CESA, Customer is making an offer to Company to receive electricity and electricity related services from Company under the terms as set forth in the CESA; and

WHEREAS, Company accepts Customer’s offer on the earlier to occur of: (i) Company returning a countersigned copy of this CESA to Customer or Customer’s third party representative or agent (“Customer’s Broker”); (ii) Company notifying Customer or Customer’s Broker in writing, including via e-mail of acceptance of this CESA; or (iii) Company takes any action, including buying electricity on a forward basis or submitting a switch for one or more Customer Facilities.

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, and intending to be bound by the terms set forth below, the Parties agree as follows.

1) ENROLLMENT AND TERM OF SERVICES

- a) **ENROLLMENT:** Customer authorizes Company to enroll each of Customer Facilities and become the REP of Record beginning with the Start Date listed on page 1 or alternately for each of the Customer Facilities on Exhibit A. Customer promises to provide Company with accurate, complete and verifiable account information, which is necessary for the timely, accurate and efficient enrollment of the Company Facilities. Company requests Customer provide an e-mail address to assist Company with the enrollment process. By providing an e-mail address, Customer authorizes Company to deliver copies of this CESA and other account information, including enrollment confirmation and CESA expiration notices via email unless Customer notifies Company otherwise. Company will use the email address strictly in accordance with its privacy policy, which is available at www.pulsepowertexas.com. Services will start on a meter reading date determined by the applicable TDU or on the specific date selected by Customer. Customer understands that the TDU may charge an additional fee per the terms of its tariff for a self-selected switch or move-in and that Company will pass-through and Customer will pay any such costs which will be passed through without mark-up.
- b) **TERM AND RENEWAL:**
- i) *Term.* This CESA is effective as of the earliest date that Company accepts Customer's offer ("Effective Date") even if Company will not begin supplying Services until after the Effective Date. Company will provide Services for the number of months listed above, beginning with the month in which the Start Date as set forth on Exhibit A for each of Customer's Facilities occurs ("Initial Term").
- ii) *Renewal.* If, at the end of the Initial Term, the Parties have not entered into an amendment to extend the Initial Term or entered into a new CESA, then Company will continue to provide Services on a Variable Rate, as defined below, until such time as Company is no longer the REP of Record for any of Customer's Facilities ("Holdover Term"). Customer will have the right to cancel the Services during the Holdover Term without penalty upon thirty (30) days written notice to Company. Customer shall be obligated to pay for any Services delivered by Company to Customer's Facilities during the Initial Term as well as any Holdover Term up to and through the date on which the termination is effective and the Company is no longer the REP of Record for the Customer Facilities.

2) SERVICES AND PRICE

- a) **SERVICE TYPES:** As indicated on page 1, Customer elected either a Fixed Price Product or an Index Adder Product for the Initial Term, and unless Customer and Company agree otherwise, the Price will be at the Holdover Rate set forth below after the Initial Term. The Price for a Fixed Price Product is stated on page 1 and will not change during the Initial Term unless there is a Change in Law which increases costs to the Company. The Price for an Index Product may change monthly and will be equal for each of Customer's Facilities, to the product of: (a) the Real Time Settlement Price Point ("SPP") as reported by ERCOT for every 15 minute interval in the Billing Period for the load zone in which each Customer Facility is located divided by 1,000 to convert the SPP to ¢ per kWh plus the Index Adder; and multiplied by (b) the Customer's corresponding interval Usage as defined below. In the event of a conflict between the SMT Usage and the usage reported by the Customer's TDU, the information provided by the Customer's TDU shall control. The Billing Period is the time between meter reads performed by the appropriate TDU. During any Holdover Term, the Price will be calculated as if the Customer had selected an Index Adder with the adder equal to \$0.03/kWh ("Holdover Rate"). The Holdover Rate can change for each billing cycle without advanced notice.
- b) **PRICE:** The Price includes energy costs to the Customer Facilities, Transmission and Distribution Losses, Ancillary Services, ERCOT uplift charges, costs associated with Reliability Unit Commitment, and Unaccounted for Energy. The Price does not include the following items which will be passed through at cost and without mark-up: (i) costs imposed by the TDU for the transmission and distribution of electricity at the rates approved by the Public Utility Commission of Texas ("PUCT"), set forth in the TDU's tariff as may be amended or altered from time to time; (ii) PUCT Assessment or other fee imposed by the PUCT; (iii) all federal, state, and local Taxes, including but not limited to the gross receipts tax ("GRT"); (iv) any changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or (v) changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs effective after the date of this Agreement and that are outside Company's control (items (i)-(v) above are the "Pass-Through Costs").
- c) **CHANGES IN PRICE.** The Price may change if there is a change in or implementation or interpretation of: (i) any law, rule, regulation, ordinance, statute, judicial decision, administrative order and the like; (ii) material change in ERCOT or the Texas Reliability ("TRE") operating guidelines or protocols, load zone boundary or hub definitions; (iii) changes in programs including, but not limited to congestion, resource adequacy, and the like; or (iv) electricity market structure, and any such change listed in (i)-(iv) above is not part of the Pass-Through Costs and results in Company incurring additional costs or expenses associated with providing Services. Customer is also responsible for paying any

nonrecurring fees and charges from the TDU including, but not limited to, fees and charges related to establishing, disconnecting, reconnecting, or maintaining electric service or equipment (collectively "TDU Fees"). Charges for Fees, including TDU Fees, will be listed as a separate line item on the Customer's bill.

- d) **TAXES.** If Customer is exempt from gross receipts tax due to being located in an unincorporated area or any other tax, including sales tax, Customer must provide Company with written proof of such exemption. Company shall not be required to recognize any such exemption until and unless Customer provides Company with the required documentation. If Customer is tax exempt and Company erroneously collected such tax, Customer's sole remedy is to seek a refund from the Texas Comptroller or other entity to whom Company is required to remit such taxes. Nothing in this sentence precludes Company from issuing a refund for any improperly collected taxes in Company's sole and absolute discretion.

3) USAGE, BILLING AND PAYMENT

- a) **USAGE:** Customer authorizes Company to obtain historical and current consumption, billing, and payment information from the applicable TDU, including the Customer's smart meter data. This authorization will remain in effect from the date Customer executes this CESA and will only expire when Company is no longer providing Services to Customer and Customer has paid all outstanding balances due to Company, including any Early Termination Fee if applicable. If Customer utilized a Customer's Broker in connection with this CESA, Company is authorized to disclose information about historical and current usage information and payment history to such Customer's Broker.
- b) **BILLING:** Customer's bill will be based on the amount of electricity and related services delivered to a Customer's ESI ID as reported by either (i) the Smart Meter Texas ("SMT") program or (ii) the TDU and reported to ERCOT during the Billing Period ("Metered Usage"). If Company does not receive actual Metered Usage for a Billing Period for any ESI ID listed on this CESA, Company may reasonably estimate the Customer's Usage ("Estimated Usage") and reconcile the Estimated Usage with the actual Usage once the TDU has provided the actual Usage to ERCOT and ERCOT has provided it to the Company ("Actual Usage"). Adjustments may take 1-2 billing cycles from the date the TDU reads a meter. Usage may include Metered Usage, Estimated Usage, or Actual Usage. The total amount of Customer's bill will be equal to: (i) the Usage times the Price; (ii) the Pass Through Charges for the Billing Period; (iii) any non-recurring costs billed invoiced to by Company by a third party in providing Services to the ESI ID that are not part of the Price, including, but not limited to: (a) TDU Fees; (b) a \$30 charge for returned checks or insufficient fund; (c) a priority Move-In fee of \$15.00 in addition to any costs charged to Company by the TDU for such service, and (iv) taxes or other charges that are assessed to the Customer.
- c) **PAYMENT:** Payments will be due on the due date shown on the bill, which shall be no less than sixteen (16) days from the date the bill is issued. Payments can be made by setting up recurring payments ("Auto-pay") via a bank account by visiting www.pulsepowertexas.com. Other payment options are: one-time payments via www.pulsepowertexas.com, calling Company at 833-785-7797, or mailing a payment to the address shown on Customer's invoice. Company may impose a convenience fee of \$2.00 per payment for payments made with a live agent over the phone. Company will charge a 5% penalty on the outstanding balance if payment is not made by the Due Date. Any check or electronic transfer returned by a bank for insufficient or unavailable funds will be treated as if Company received no payment at all. If Company is forced to initiate collection activity for undisputed past due amounts, Customer will pay any costs incurred by Company in pursuing such remedy, including any attorney's fees and court costs, as well as an administrative charge of \$50.00. If Customer has two (2) or more returned payments in twelve (12) consecutive billing cycles, Company may take any one or more of the following actions: (a) terminate this Agreement upon ten (10) days written notice to the Customer, after which time if Company may order disconnection of the Customer Facilities unless Customer has found a new REP of Record; (b) require Company to post a deposit or to increase its deposit amount; and/or (c) require Customer to pay via direct debit, money order or other immediately available form of funds for a period of twelve consecutive billing cycles. Company is not responsible for notifying Customer of bounced checks or returned electronic payments.

4) DEPOSITS.

- a) **SECURITY DEPOSITS:** Customers unable to demonstrate satisfactory credit may be required to post a deposit or other collateral to receive Services. The amount of the deposit will be equal to the estimated bills, calculated as the Price, plus Pass-Through Costs and any applicable taxes, based upon the average usage for Customer's Facilities for the three highest consumption months in the past 12 months. When calculating the Price for a Customer on an Index Adder Product, the Price shall be based on one hundred and twenty percent (120%) of the simple averages of the Day Ahead Settlement Point Prices for the three highest calendar months in the past 12 months prior to the date the deposit is requested plus the applicable Index Price Adder. Company may require an initial or additional deposit from Customer

at any time Company is providing Services if: (i) Company, in its commercially reasonable judgement believes that Customer's credit worthiness has declined; (ii) Customer, during the previous twelve (12) billing cycles of service, has been late paying an invoice more than once; (iii) Customer has had service terminated or disconnected for nonpayment; or (iv) if estimated bills are more than twice the average of the bills over the last 12 months. If an initial or additional deposit is required, Company will send notice and require the Customer to pay the deposit within five (5) business days after the issuance of written notice, and a disconnection notice may be combined with or issued concurrently with the request for deposit.

- b) **INTEREST ON DEPOSITS.** Company will not be responsible for payment of any interest on any deposit. Any deposit will be refunded or credited upon request from Customer in the event that: (i) Customer has made twelve (12) consecutive payments without having more than two (2) late payments or (ii) Customer transfers service from Company or closes the locations associated with the ESI IDs. In the case of (ii) above, Customer's deposit amount, minus any outstanding balance owed for electric service, will be refunded to Customer.

5) TERMINATION AND DISCONNECTION

- a) **CUSTOMER'S RIGHT TO TERMINATE:** Customer may cancel or terminate the CESA with Company as to any one or more of the Customer Facilities before the end of the Initial Term by contacting Company at 833-785-7797 or email at customercare@pulsepowertexas.com. Termination may be either with or without cause.

i) Right To Terminate With Cause. Customer may terminate this CESA without penalty in the event that Company: (i) fails to provide Services as provided in this CESA and such failure continues for a period of ten (10) business days from the date that Customer notifies Company of such failure without Company curing or beginning to cure such failure; (ii) Company fails to pay its debts as they come due for a period of sixty days or more; or (iii) is the subject of any voluntary or involuntary bankruptcy proceeding, receivership or similar action and Company fails to have such action dismissed within ninety (90) days from the date such action is commenced ((i)-(iii) above each a "Company Event of Default").

ii) Right to Terminate Without Cause. If Customer cancels or terminates this CESA for any reason other than a Company Event of Default, Company may charge, and Customer agrees to pay an Early Termination Fee. The amount of the Early Termination Fee will be calculated as follows: for each Customer Facility which is receiving a Fixed Price, the difference between the Price and the Current Market Value of the Remaining Quantities multiplied by the Remaining Quantities. Current Market Value means the price a willing buyer would pay a willing seller for the Services for the Remaining Quantities. Current Market Value will be determined by Company in its commercially reasonable discretion and may be based on a number of factors including current conditions in the retail and wholesale energy markets, Company's internal forward price curves, and/or the forward price curves of an independent third party. Remaining Quantities means the amount of electricity that Company, in its commercially reasonable discretion, anticipated delivering to the Customer Facilities for the time period from the date of termination until the end of the Initial Term. For an Index Adder Product, the Early Termination Fee will be equal to the amount of the Index Adder specified in the CESA multiplied by the Remaining Quantities. Customer and Company agree that damages for Customer's early termination of this CESA are impossible or difficult to determine and that the Early Termination Fee is a reasonable estimate of the damages that would result from Customer' terminating the CESA before the end of the Initial Term. Customer remains responsible for all charges billed by the Company through the date the TDU processes the termination.

iii) Obligations after Termination. If Customer cancels or terminates service with Company, Company's obligations will conclude after the meter read date when Company is no longer designated as Customer's REP or the TDU disconnects the meter. If Customer's requested termination date requires an off-cycle meter read or incurs any other charge from the TDU, Customer will be responsible for payment of those charges. Customer's obligations under the CESA only end when all outstanding balances are paid in full. Cancellation or termination of the CESA does not relieve Customer of the obligation to pay outstanding balances or any early termination fee that may apply.

- b) **COMPANY'S RIGHT TO TERMINATE:** Company, upon at least five (5) business days written notice to Customer, may terminate this CESA without penalty if: (i) Customer fails to pay all undisputed amounts when due or fails to post any required deposit, whether an initial or additional deposit and such failure continues for more than five (5) business days from the date Company sends written notice of such past due amount from Company; (ii) any representation or warranty made by Customer is untrue or becomes untrue while Company is the REP of Record; (iii) a Change in Law or other legislative, regulatory or legal action makes Company's performance of this CESA commercially impracticable or impossible; (iv) if the applicable TDU cannot read Customer's meter or provide Usage data for greater than 90 days; or (v) if Customer is the subject either voluntarily or involuntarily, of any bankruptcy proceeding, receivership, or other action as a result of Company's inability to pay its bills (each of (i)-(v) above being a "Customer Event of Default"). If Company terminates this CESA due to a Customer Event of Default, in addition to any amounts owed up and through the date of termination, Company may charge, and Customer will pay, the Early Termination Fee. Any Services provided after Company terminates this CESA will be at the Holdover Rate.
- c) **DISCONNECTION OF SERVICE FOR NONPAYMENT:** Company may disconnect the Customer's electricity service upon the occurrence of a Customer Event of Default provided that Customer does not cure such Customer Event of Default within the time frame specified for such Customer Event of Default or if there is no timeframe specified, within fifteen (15) business days from the date Company sends Customer written notice of such Customer Event of Default. In the event of disconnection for a Customer Event of Default, Customer remains responsible for paying all outstanding amounts plus any Early Termination Fees and any other fees imposed by Customer's TDU for such disconnection. In addition, Company may place a switch-hold on Customer Facilities which have been disconnected for non-payment pursuant to PUCT Substantive Rule 25.480.
- d) **DISCONNECTION WITHOUT NOTICE:** Company or the TDU may disconnect service without notice if a known dangerous condition exists for as long as the condition exists; where service is connected without authority by a person who has not made application for service; where service is reconnected without authority after disconnection for nonpayment; where there has been tampering with the meter or other service provider equipment of the TDU, municipally owned utility, or electric cooperative; or where there is evidence of theft of service.
- e) **CRITICAL LOAD PUBLIC SAFETY AND INDUSTRIAL CUSTOMERS.** If Customer Facilities include a location designated as a Critical Load Public Safety Customer or Industrial Customer (collectively "Critical Load Commercial Customer"), Customer will notify Company of such designation or the pending status of an application for such status. For any Critical Load Commercial Customer, Company will comply with the requirements of PUCT Substantive Rule § 25.497. Designation as a Critical Load Commercial Customer does not guarantee an uninterrupted supply of electricity nor does it relieve Customer of its obligation to pay any amount which may become due to Company under this CESA.

6) OUTAGE REPORTING AND SERVICE REQUESTS

Customer understands that the TDU, and not the Company, is responsible for the delivery of electricity to the Customer Facilities and owns the meter which measures the amount of electricity consumed by Customer. In the event of a service outage or other interruption in power other than for a disconnection as provided for in this CESA, or any other service requests related to the delivery of electricity to Customer, Customer should contact the appropriate TDU at the contact numbers provided below.

TDU Name	24 Hour Outage Number	Service Requests
AEP Texas North	866-223-8508	877-373-4858
AEP Texas Central	866-223-8508	877-373-4858
CenterPoint Energy	800-332-7143; 713-207-2222	800-332-7143; 713-207-2222
Nueces Electric Cooperative	800-632-9288	800-632-9288
Oncor Electric Delivery	888-313-4747	888-313-6862
Texas-New Mexico Power	888-866-7456	888-866-7456

7) WARRANTIES AND REPRESENTATIONS

- a) **WARRANTY BY CUSTOMER.** Customer represents and warrants to Company that: (i) the signatory below is duly authorized to execute this CESA and such action does not violate any governing document or charter of Company; (ii) that Company is not aware of any current, potential or threatened litigation or voluntary or involuntary bankruptcy proceeding threatened against it; and (iii) the aggregate peak demand of all Customer Facilities exceeds 50 kW for the most recent 12 months and will continue to exceed 50 kW during the Initial Term or any Holdover Term and that none of the Customer Facilities to be served by this CESA are classified as residential meters by the TDU. In the event that

the aggregate peak demand of Customer Facilities has not exceeded 50 kW at any time in the past 12 months, Company may either: (i) provide Customer with a new CESA and Price, which Customer must reject within 14 days of the date Company notifies Customer of such proposed new CESA and Price; or (ii) declare a Customer Event of Default and terminate this CESA as provided above. If Customer rejects the proposed new CESA and Price within 14 days of receipt, this CESA will terminate as of the date of such rejection and a Customer Event of Default will be deemed to have occurred, giving Company the right to terminate as set forth under the section entitled "Company's Right to Terminate". Any Early Termination Fee will be based on the Price in effect as if Company had not issued any new Price. Nothing herein shall relieve Customer of its obligation to pay Company for any amounts which are due to Company under this CESA.

- b) **WARRANTY BY COMPANY.** Company does not deny service based on a customer or applicant's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer/applicant in an economically distressed geographic area, or qualification for low income or energy efficiency services. Company has the full legal authority to enter into this CESA and is not aware of any pending or threatened bankruptcy or regulatory proceeding or action as of the Effective Date which would materially impair Company's ability to perform its obligations under this CESA.
- c) **DISCLAIMER OF WARRANTIES: COMPANY AND CUSTOMER AGREE THAT NEITHER HAS MADE ANY ADDITIONAL PROMISES TO EACH OTHER IN THIS AGREEMENT ABOUT THE SERVICES OTHER THAN WHAT ARE STATED EXPRESSLY HEREIN. COMPANY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.**

8) MISCELLANEOUS

- a) **RISK OF LOSS AND INDEMNITY:** Customer will be deemed to be in exclusive control and responsible for any damages or injury caused thereby of the electric power after receipt at the meter at a Customer Facility. Customer shall indemnify, defend, and hold harmless Company from all claims for any loss, damage, or injury to persons or property, including without limitation, all consequential, exemplary, or punitive damages arising from or related to any act or incident occurring after title to the electricity has passed to Customer. Company shall indemnify, defend, and hold harmless Customer from all claims for any loss, other than lost profits, direct damages, or injuries to person or property arising from or related to any act or incident occurring before title to the electricity has passed to Customer's TDU.
- b) **LIMITATIONS OF LIABILITY:** If either party becomes liable to the other for damages, then that liability is limited to direct, actual damages only which includes the Early Termination Fee. Neither Company or Customer will be responsible to the other for consequential, special, incidental, punitive, exemplary, or indirect damages. Customer agrees to waive all other remedies at law or in equity. These limitations apply without regard to the cause of any liability or damage, including if the damages result from negligence or gross negligence, whether sole, joint, concurrent, or active or passive. Liability is transferred from Company to the Customer at the point at where Customer's TDU receives the electricity and is transferred to Customer at Customer's meter. Customer will indemnify Company for any third-party liability arising at and from Customer's meter.
- c) **FORCE MAJEURE:** Company will endeavor in a commercially reasonable manner to provide Service but does not guaranty a continuous supply of electrical energy. Events that are out of our control ("Force Majeure Events") may result in interruptions in service. Company will not be liable for any such interruptions. Company does not generate, transmit or distribute electricity to Customer. Therefore, Customer agrees that Company is not liable for damages caused by Force Majeure Events, including, but not limited to, acts of God, acts of any governmental authority, including the PUCT or ERCOT, accidents, strikes, labor trouble, required maintenance work, inability to access the TDU or ERCOT system, nonperformance of the TDU or ERCOT, delay or impact of Change in Laws, or any cause beyond Company's reasonable control. If a Force Majeure Event occurs which renders Company unable to perform in whole or in part under this CESA, Company's performance under this CESA shall be excused for the duration of such event and if such event lasts more than thirty calendar days, Company has the right to cancel this CESA in its sole discretion by providing Customer 14 days' notice of such cancellation.
- d) **DISPUTE RESOLUTION.** In the event of any dispute between the Parties to this CESA, the Parties will first try to negotiate among themselves to attempt to resolve such dispute. However, either Party may, to the fullest extent permitted by law, submit any dispute arising out of or relating to this CESA, including claims arising in contract, tort, statutory or otherwise, such dispute to arbitration, which shall be the exclusive and final method for settling any dispute under this CESA. The Parties are not required to engage in negotiations before submitting any dispute to Arbitration.

Any arbitration proceeding hereunder shall be conducted in accordance with the rules and procedures of the American Arbitration Association and exclusively in Houston, Texas. . Each Party will bear its own costs in the event of any arbitration proceeding. Any arbitration will take place within thirty (30) business days from the date the arbitration panel is assembled. Neither party may alter, amend, or otherwise change the binding obligation to arbitrate disputes set forth in this provision without the express consent of the other party. Company and Customer acknowledge and agree that arbitration will only be pursued on an individual basis and will not be pursued on a class-wide, representative or consolidated basis. This Agreement does not allow class, representative or collective arbitrations even if the AAA procedures or rules would do so. Furthermore, Customer agrees not to pursue or participate in any proceeding as a representative of a class, collective action, or in any other capacity than on behalf of Customer itself.

- e) **DISCLAIMER OF CUSTOMER PROTECTION RULES.** Customer, as a material inducement for Company to enter into this CESA, hereby disclaims any and all rights that it may have under the PUCT Customer Protection Rules located at 16 Texas Administrative Code § 25.471 et. seq (“Customer Protection Rules”). To the extent that any provision of this CESA conflicts with the terms or requirements of the Customer Protection Rules, the terms of this CESA shall control.
- f) **SEVERABILITY:** Should any provision contained herein be held unenforceable by a court of competent jurisdiction such provision shall be reformed to create a valid and enforceable provision to the maximum extent provided by law. However, if such provision cannot be reformed, it shall be deleted without affecting any other provision of this CESA. Any failure by Company to enforce any term or condition of this CESA, or to exercise any right under this CESA, shall not be considered a waiver of Company’s right thereafter to enforce each and every such term and condition or to exercise any right under this CESA in the future, whether of a like kind or of a different nature. The provisions of this CESA concerning payment, limitation of liability, and waivers will survive the termination or expiration of this CESA. The CESA provisions about payment, limitation of liability, and waivers will survive the termination or expiration of this CESA.
- g) **GOVERNING LAW:** This CESA shall be governed by, interpreted and construed under, and enforced in accordance with the laws of the State of Texas without regard to principles of conflicts of law. The provisions of the Texas Uniform Commercial Code (“UCC”) shall apply to this CESA, and electricity shall be a “good” for purposes of the UCC. Customer and Company hereby acknowledge and agree that this CESA constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code and further acknowledge and agree that Company is a “forward contract merchant” for such purposes.
- h) **NOTICES:** All notices and correspondence from one Party to the other shall be in writing and delivered to Customer at the mailing address specified on Page 1 of this CESA and delivered to Company at 10200 Grogans Mill Rd, Suite 150; The Woodlands TX 77380. Notices will be deemed delivered on the next business day after they are deposited with Federal Express or any nationally recognized overnight carrier and send for next day delivery, on the same day if they are sent via facsimile provided that the sending Party receives a written confirmation of delivery before 5:00 p.m. on a business day in the time zone in which the Party to whom notice is sent is located, otherwise such facsimile notice will be deemed delivered on the next business day or within three business days if deposited with the U.S. Postal Service, first class posted pre-paid. Either Party may change the address to which notices are sent by notifying the other Party in writing of such change of address.
- i) **ASSIGNMENT:** Customer may not assign its interest in and obligations under this CESA without the express written consent of Company, which may not be unreasonably withheld, conditioned or delayed. Company may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financial agreement and may assign this CESA to any energy supplier, energy services company or other entity.
- j) **ENTIRE AGREEMENT AND AMENDMENT.** This CESA represents the entire agreement among the Parties and supersedes and replaces any prior agreement, representation or promise, whether written or oral, made or entered into prior to the execution of this CESA by a Party. No amendment or modification to this CESA shall be valid or enforceable unless reduced to writing and agreed to by both of the Parties.
- k) **NET METERING PROGRAM:** To be considered eligible to participate in Company’s net metering program, Customer must generate a portion or all of Customer’s retail electricity requirements using energy generation equipment located at an ESI ID. Additionally, Customer must have a bi-directional meter that has been tested and calibrated by the TDU to assure accuracy prior to commencing services and have completed all necessary application forms with the TDU. This program is available on a first come, first serve basis until the capacity of 5% of the peak demand supplied by Company in the previous calendar year in the TDU’s are reached. Please contact Company for more information.

COMMERCIAL ENERGY SERVICES AGREEMENT



- l) **RENEWABLE POWER:** For renewable price plans, Company will purchase and retire Renewable Energy Certificates ("RECs") to offset the specified percentage of Customer's anticipated electricity consumption equal to the percentage specified in the Price.
- m) **DEFINITIONS.** Any capitalized term not defined herein shall have the meaning ascribed to such term by the ERCOT Nodal Protocols in existence at the Effective Date and if not defined in such protocols, as the term is defined in the Customer Protection Rules.

IN WITNESS WHEREOF, Company and Customer have duly executed and delivered this Agreement as of the Effective Date and each signatory swears and affirms that they have the authority to enter into this Agreement on behalf of the entity(s) they represent.

CUSTOMER	PULSE POWER, LLC
Signature:	Signature:
Printed Name:	Rob Cantrell
Title:	President
Date:	Date:

EXHIBIT A—LIST OF CUSTOMER FACILITIES

ESI ID	Street Address	City, State Zip	Estimated Start Date	Estimated Annual Usage (kWh)