

California Independent System Operator Corporation
Fifth Replacement Tariff

Appendix B.21 Distributed Energy Resource Provider Agreement

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

AND

[DISTRIBUTED ENERGY RESOURCE PROVIDER]

DISTRIBUTED ENERGY RESOURCE PROVIDER AGREEMENT

THIS AGREEMENT is dated this _____ day of _____, _____ and is entered into, by and between:

- (1) **[Full legal name]**, having its registered and principal place of business located at **[legal address]** (the "Distributed Energy Resource Provider");

and
- (2) **California Independent System Operator Corporation** ("CAISO"), a California nonprofit public benefit corporation having a principal executive office located at such place in the State of California as the CAISO Governing Board may from time to time designate.

The Distributed Energy Resource Provider and the CAISO are hereinafter referred to as the "Parties".

Whereas:

- A.** The CAISO Tariff provides that the CAISO shall only accept Bids for a Distributed Energy Resource Aggregation from a Scheduling Coordinator.
- B.** The CAISO Tariff further provides that Energy and Ancillary Services may be provided by Distributed Energy Resource Providers.
- C.** The Distributed Energy Resource Provider desires to provide Energy and/or Ancillary Services from one or more Distributed Energy Resource Aggregations through a Scheduling Coordinator and represents to the CAISO that it will comply with the applicable provisions of the CAISO Tariff.
- D.** The Parties are entering into this Agreement in order to establish the terms and conditions on which the CAISO and the Distributed Energy Resource Provider will discharge their respective duties and responsibilities under the CAISO Tariff.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

- 1.1 Master Definitions Supplement.** All terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement in Appendix A of the CAISO Tariff.
- 1.2 Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement:

California Independent System Operator Corporation
Fifth Replacement Tariff

- (a) if there is any inconsistency between this Agreement and the CAISO Tariff, the CAISO Tariff will prevail to the extent of the inconsistency;
- (b) the singular shall include the plural and vice versa;
- (c) the masculine shall include the feminine and neutral and vice versa;
- (d) “includes” or “including” shall mean “including without limitation”;
- (e) references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
- (f) a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;
- (g) unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
- (h) unless the context otherwise requires, any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;
- (i) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
- (j) any reference to a day, week, month or year is to a calendar day, week, month or year; and
- (k) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

ARTICLE II

ACKNOWLEDGEMENTS OF DISTRIBUTED ENERGY RESOURCE PROVIDER AND CAISO

- 2.1 CAISO Responsibility.** The Parties acknowledge that the CAISO is responsible for the efficient use and reliable operation of the CAISO Controlled Grid consistent with achievement of planning and Operating Reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the North American Electric Reliability Corporation and further acknowledge that the CAISO may not be able to satisfy fully these responsibilities if the Distributed Energy Resource Provider fails to fully comply with all of its obligations under this Agreement and the CAISO Tariff.
- 2.2 Scope of Application to Parties.** The Distributed Energy Resource Provider and CAISO acknowledge that to submit Bids for Distributed Energy Resource Aggregations to the CAISO through a Scheduling Coordinator, the Distributed Energy Resource Provider must sign this Agreement in accordance with Section 4.17 of the CAISO Tariff.
- 2.3 Distributed Energy Resource Provider Responsibility.** The Distributed Energy Resource Provider acknowledges that it has the responsibility to ensure that it owns, operates, or has sufficient contractual entitlement to provide Energy and/or Ancillary Services from the Distributed Energy Resource Aggregation(s) it represents in accordance with the CAISO Tariff.

ARTICLE III

TERM AND TERMINATION

- 3.1 Effective Date.** This Agreement shall be effective as of the later of the date it is executed by the Parties or the date accepted for filing and made effective by FERC, if such FERC filing is required, and shall remain in full force and effect until terminated pursuant to Section 3.2 of this Agreement.
- 3.2 Termination**
- 3.2.1 Termination by CAISO.** Subject to Section 5.2, the CAISO may terminate this Agreement by giving written notice of termination in the event that the Distributed Energy Resource Provider commits any material default under this Agreement and/or the CAISO Tariff which, if capable of being remedied, is not remedied within thirty (30) days after the CAISO has given, to the Distributed Energy Resource Provider, written notice of the default, unless excused by reason of Uncontrollable Forces in accordance with Article X of this Agreement; provided, however, that any outstanding financial right or obligation or any other obligation under the CAISO Tariff of the Distributed Energy Resource Provider that has arisen while the Distributed Energy Resource Provider was submitting Bids for Distributed Energy Resource Aggregation(s), and any provision of this Agreement necessary to give effect to such right or obligation, shall survive until satisfied. With respect to any notice of termination given pursuant to this Section, the CAISO must file a timely notice of termination with FERC, if this Agreement was filed with FERC, or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the CAISO with FERC will be considered timely if: (1) the filing of the notice of termination is made after the preconditions for termination have been met, and the CAISO files the notice of termination within sixty (60) days after issuance of the notice of default; or (2) the CAISO files the notice of termination in accordance with the requirements of FERC Order No. 2001. This Agreement shall terminate upon acceptance by FERC of such a notice of termination, if filed with FERC, or thirty (30) days after the date of the CAISO's notice of default, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.
- 3.2.2 Termination by Distributed Energy Resource Provider.** In the event that the Distributed Energy Resource Provider no longer wishes to submit Bids or transmit Energy over the CAISO Controlled Grid, it may terminate this Agreement, on giving the CAISO not less than ninety (90) days written notice, provided, however, that in accordance with Section 4.1.2, the Distributed Energy Resource Provider may eliminate from the Distributed Energy Resource Aggregations(s) which it no longer provides for and such modification shall be effective upon receipt of notice by the CAISO. With respect to any notice of termination given pursuant to this Section, the CAISO must file a timely notice of termination with FERC, if this Agreement has been filed with FERC, or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the CAISO with FERC will be considered timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and the CAISO files the notice of termination within thirty (30) days of receipt of such request; or (2) the CAISO files the notice of termination in accordance with the requirements of FERC Order No. 2001. This Agreement shall terminate upon acceptance by FERC of such a notice of termination, if such notice is required to be filed with FERC, or upon ninety (90) days after the CAISO's receipt of the Distributed Energy Resource Provider's notice of termination, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.

ARTICLE IV

GENERAL TERMS AND CONDITIONS

4.1 General Terms and Conditions Applicable to Distributed Energy Resource Providers

- 4.1.1 Distributed Energy Resource Provider Requirements.** A Distributed Energy Resource Provider must satisfy all applicable rules and regulations of the Utility Distribution Company or Metered Subsystem tariffs as well as any requirements of the applicable Local Regulatory Authority, as well as applicable interconnection requirements, if any. A Distributed Energy Resource Provider must ensure that Distributed Energy Resources that comprise its Distributed Energy Resource Aggregation satisfy all applicable rules and regulations of Utility Distribution Company or Metered Subsystem tariffs, any requirements of the Local Regulatory Authority, as well as applicable interconnection requirements, if any. The Distributed Energy Resource Provider must certify to the CAISO that any required agreements between the Distributed Energy Resource Provider and the Load Serving Entities or other agreements required by the Local Regulatory Authority are fully executed.
- 4.1.2 Agreement Subject to CAISO Tariff.** The Distributed Energy Resource Provider must comply with all applicable terms of the CAISO Tariff. This Agreement shall be subject to the CAISO Tariff, which shall be deemed to be incorporated herein.
- 4.1.3 Obligations relating to Major Incidents.** The Distribution Energy Resource Provider shall promptly provide such information as the CAISO may reasonably require in relation to the CAISO's investigations of operating situations or events, or for the CAISO's reporting to the authorities such as the FERC, California Public Utilities Commission, Western Electricity Coordinating Council, or North American Electric Reliability Corporation.
- 4.1.4 Small Utility Limits.** A Distributed Energy Resource Provider that aggregates Distributed Energy Resources that are customers of utilities that distribute four million MWh or less in the previous fiscal year must certify to the CAISO that its participation is permitted by the Local Regulatory Authority applicable to Distributed Energy Resources, and that it has satisfied all applicable rules and regulations of the Local Regulatory Authority. Distributed Energy Resource Providers that met this requirement previously must notify the CAISO immediately if the Local Regulatory Authority prohibits participation.
- 4.2.1 Technical Characteristics.** The Distributed Energy Resource Provider has identified the Distributed Energy Resources that it owns, operates, or has a contractual entitlement to as part of a Distributed Energy Resource Aggregation in Schedule 1, as required by Section 4.17 of the CAISO Tariff. The Distributed Energy Resource Provider has also provided to the CAISO in Schedule 1 the required information regarding the capacity and operating characteristics of each of the Distributed Energy Resource Aggregations listed in that schedule. Pursuant to Sections 8.9 and 8.10 of the CAISO Tariff, the CAISO may verify, inspect, and test the capacity and operating characteristics of the Distributed Energy Resource Aggregations identified in Schedule 1.
- 4.2.2 Metering and Communication.** Metering requirements for the submittal of Settlement Quality Meter Data for Scheduling Coordinator Metered Entities will be in accordance with Section 10.3 of the CAISO Tariff. Pursuant to Sections 8.4.5 and 8.4.6 of the CAISO Tariff, Distributed Energy Resource Aggregations that are scheduled or bid as qualifying Ancillary Services are required to comply with the CAISO's communication and metering requirements.
- 4.2.3 Notification of Changes.** The Distributed Energy Resource Provider shall notify the CAISO of any proposed change(s) to the registration of technical information for its Distributed Energy Resource Aggregation(s). The CAISO will update its Master File in accordance with Section 30.7.3.2 of the CAISO Tariff. Pursuant to Sections 8.9 and 8.10 of the CAISO Tariff, the CAISO

California Independent System Operator Corporation
Fifth Replacement Tariff

may verify, inspect and test the capacity and operating characteristics of the revised information provided. Unless the Distributed Energy Resource fails to test at the values in the proposed change(s), the Distributed Energy Resource Provider's proposed change(s) will become effective upon the effective date for the next scheduled update of the Master File, provided that the Distributed Energy Resource Provider submits the changed information by the applicable deadline and is tested by the deadline. Subject to such notification, this Agreement shall not apply to any Distributed Energy Resources which the Distributed Energy Resource Provider no longer owns, operates or to which it no longer has a contractual entitlement.

4.2.4 Obligations Relating to Energy and Ancillary Services

4.2.4.1 Submission of Bids and Self-provided Schedules. When the Scheduling Coordinator on behalf of the Distributed Energy Resource Provider submits a Bid, the Distributed Energy Resource Provider will, by the operation of this Section 4.2.4.1, warrant to the CAISO that it has the capability to provide that service in accordance with the CAISO Tariff and that it will comply with CAISO Dispatch Instructions for the provision of the service in accordance with the CAISO Tariff.

4.2.4.2 Ancillary Service Certification. The Distributed Energy Resource Provider shall not use a Scheduling Coordinator to submit a Bid for the provision of an Ancillary Service or submit a Submission to Self-Provide an Ancillary Service unless the Scheduling Coordinator serving that Distributed Energy Resource Provider is in possession of a current Ancillary Service certificate pursuant to Sections 8.3.4 and 8.4 of the CAISO Tariff.

4.2.5 Distribution System Communications. Where the Utility Distribution Company requires its own direct communication with the Distributed Energy Resource Provider for the safety and reliability of the Distribution System, those communication and data protocols will be established in Schedule 4 to the Distributed Energy Resource Provider Agreement.

ARTICLE V

PENALTIES AND SANCTIONS

5.1 Penalties. If the Distributed Energy Resource Provider fails to comply with any provisions of this Agreement, the CAISO shall be entitled to impose penalties and sanctions on the Distributed Energy Resource Provider. No penalties or sanctions may be imposed under this Agreement unless a Schedule or CAISO Tariff provision providing for such penalties or sanctions has first been filed with and made effective by FERC. Nothing in this Agreement, with the exception of the provisions relating to the CAISO ADR Procedures, shall be construed as waiving the rights of the Distributed Energy Resource Provider to oppose or protest any penalty proposed by the CAISO to the FERC or the specific imposition by the CAISO of any FERC-approved penalty on the Distributed Energy Resource Provider.

5.2 Corrective Measures. If the Distributed Energy Resource Provider fails to meet or maintain the requirements or its responsibilities set forth in this Agreement and/or the CAISO Tariff, the CAISO shall be permitted to take any of the measures, contained or referenced in the CAISO Tariff, which the CAISO deems to be necessary to correct the situation.

ARTICLE VI

COSTS

6.1 Operating and Maintenance Costs. The Distributed Energy Resource Provider shall be responsible for all its costs incurred in meeting its obligations under this Agreement for the Distributed Energy Resource Aggregation(s) identified in Schedule 1.

ARTICLE VII

DISPUTE RESOLUTION

- 7.1 Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the CAISO ADR Procedures set forth in Section 13 of the CAISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the CAISO Tariff to Market Participants shall be read as a reference to the Distributed Energy Resource Provider and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

- 8.1 Authorization to Enter Into Agreement.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.
- 8.2 Necessary Approvals as to Distributed Energy Resources.** The Distributed Energy Resource Provider represents that all necessary leases, approvals, permits, licenses, easements, rights of way or access to install, own and/or operate the Distributed Energy Resource Aggregation(s) for which it will Bid or otherwise act under this Agreement have been obtained by the Distributed Energy Resource Provider prior to submitting technical information to the CAISO.

ARTICLE IX

LIABILITY

- 9.1 Liability.** The provisions of Section 14 of the CAISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the CAISO Tariff to Market Participants shall be read as references to the Distributed Energy Resource Provider and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE X

UNCONTROLLABLE FORCES

- 10.1 Uncontrollable Forces Tariff Provisions.** Section 14.1 of the CAISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 14.1 of the CAISO Tariff to Market Participants shall be read as a reference to the Distributed Energy Resource Provider and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE XI

MISCELLANEOUS

- 11.1 Assignments.** Either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party's prior written consent in accordance with Section 22.2 of the CAISO Tariff. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.
- 11.2 Notices.** Any notice, demand, or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with Section 22.4 of the CAISO Tariff, provided that all references in Section 22.4 of the CAISO Tariff to Market Participants shall be read as a reference to the Distributed Energy Resource Provider and references to the CAISO Tariff shall be read as references to this Agreement, and unless otherwise stated or agreed shall be made to the representative of the other Party indicated in Schedule 2. A Party must update the information in Schedule 2 of this Agreement as information changes. Such changes shall not constitute an amendment to this Agreement.
- 11.3 Waivers.** Any waiver at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter

California Independent System Operator Corporation
Fifth Replacement Tariff

arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.

- 11.4 Governing Law and Forum.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement to which the CAISO ADR Procedures do not apply, shall be brought in any of the following forums, as appropriate: any court of the State of California, any federal court of the United States of America located in the State of California, or, where subject to its jurisdiction, before the Federal Energy Regulatory Commission.
- 11.5 Consistency with Federal Laws and Regulations.** This Agreement shall incorporate by reference Section 22.9 of the CAISO Tariff as if the references to the CAISO Tariff were referring to this Agreement.
- 11.6 Merger.** This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
- 11.7 Severability.** If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.
- 11.8 Amendments.** This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. Nothing herein shall be construed as affecting in any way the right of the CAISO to make unilateral application to FERC for a change in the rates, terms and conditions of this Agreement under Section 205 of the FPA and pursuant to FERC's rules and regulations promulgated thereunder, and the Distributed Energy Resource Provider shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the FPA and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the FPA and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein. The standard of review FERC shall apply when acting upon proposed modifications to this Agreement by the CAISO shall be the "just and reasonable" standard of review rather than the "public interest" standard of review. The standard of review FERC shall apply when acting upon proposed modifications to this Agreement by FERC's own motion or by a signatory other than the CAISO or non-signatory entity shall also be the "just and reasonable" standard of review. Schedules 1, and 2 are provided for informational purposes and revisions to those schedules do not constitute a material change in the Agreement warranting FERC review.

California Independent System Operator Corporation
Fifth Replacement Tariff

11.9 Counterparts. This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

California Independent System Operator Corporation

By: _____

Name: _____

Title: _____

Date: _____

Distributed Energy Resource Provider

By: _____

Name: _____

Title: _____

Date: _____

California Independent System Operator Corporation
Fifth Replacement Tariff

SCHEDULE 1

California Independent System Operator Corporation
Fifth Replacement Tariff

SCHEDULE 2

NOTICES

[Section 11.2]

Distributed Energy Resource Provider

Name of Primary

Representative:_____

Title:_____

Company:_____

Address:_____

City/State/Zip Code:_____

Email Address:_____

Phone:_____

Fax No:_____

Name of Alternative

Representative:_____

Title:_____

Company:_____

Address:_____

City/State/Zip Code:_____

Email Address:_____

Phone:_____

Fax No:_____

California Independent System Operator Corporation
Fifth Replacement Tariff

CAISO

Name of Primary

Representative: _____

Title: _____

Company: _____

Address: _____

City/State/Zip Code: _____

Email Address: _____

Phone: _____

Fax No: _____

Name of Alternative

Representative: _____

Title: _____

Company: _____

Address: _____

City/State/Zip Code: _____

Email Address: _____

Phone: _____

Fax No: _____

California Independent System Operator Corporation
Fifth Replacement Tariff

SCHEDULE 3

CAISO IMPOSED PENALTIES AND SANCTIONS

[Section 5.1]

TO BE INSERTED UPON FERC APPROVAL

California Independent System Operator Corporation
Fifth Replacement Tariff

SCHEDULE 4

COMMUNICATION AND DATA PROTOCOLS