

SAMPLE AGREEMENT

ATTACHMENT A

**AGREEMENT TO PARTICIPATE AS A RETAIL ELECTRICITY SUPPLIER FOR MEMBERS
OF THE
H-GAC ENERGY PURCHASING CORPORATION.**

COVER SHEET

This *Agreement to Participate as a Retail Electricity Supplier for Members of the H-GAC Energy Purchasing Corporation* is made as of and effective on the date set forth below (“Effective Date”). The Agreement, together with the *Master Terms and Conditions For Retail Supply of Electricity to Members of the H-GAC Energy Purchasing Corporation, Version 3: July 1, 2020* (the “Master Terms and Conditions”), incorporated herein by reference, and all Participation Confirmations executed by the Parties pursuant to the Master Terms and Conditions (and any attachments thereto), also incorporated herein by reference, shall together constitute a single integrated agreement between the Parties and shall be referred to as the “Contract.” The Parties to this Contract are the H-GAC Energy Purchasing Corporation (“HGACEnergy”) and the Supplier identified below. Notice under this Contract shall be given to the other Party at the following respective addresses shown below.

Effective Date: _____

HGACEnergy Notice:

H-GAC Energy Purchasing Corporation
Attention: Gwen Norman
3555 Timmons Lane, Suite 500
Houston, Texas 77027-6748
Phone: (713) 993-2420
Fax: (713) 993-4548

Supplier Name and Notice:

Attention: _____
Address: _____

Phone: (____) _____ - _____
Fax: (____) _____ - _____

IN WITNESS WHEREOF, the Parties have caused this Contract to be duly executed (including if feasible by electronic signature) as of the Effective Date, in duplicate originals, each of which shall constitute and be an original, and the persons executing this Contract represent and warrant that they are duly authorized to execute this Contract on behalf of the Party they represent and thereby bind that Party to the Master Terms and Conditions.

**H-GAC ENERGY PURCHASING
CORPORATION**

SUPPLIER

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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**MASTER TERMS AND CONDITIONS FOR
RETAIL SUPPLY OF ELECTRICITY TO
MEMBERS OF THE
H-GAC ENERGY PURCHASING CORPORATION**

Preliminary Statement

The H-GAC Energy Purchasing Corporation (the “Corporation”) is a non-profit political subdivision corporation formed by the Houston-Galveston Area Council of Governments (“H-GAC”), a public instrumentality established pursuant to Senate Bill 7 of the 76th Texas Legislature, as amended from time to time, to perform an essential public function. H-GAC organized the Corporation for the purpose of helping political subdivisions in Texas to purchase and receive electricity and related services on advantageous terms. Political subdivisions of the State of Texas become a Member of the Corporation by resolution. The Supplier has been selected to offer to sell electricity and related services to Members.

The Corporation shall conduct a process through which the Supplier will have the opportunity to offer its best pricing which a Member, potential Member, or group of Members as defined by the Corporation, can accept, in the manner set forth in this Contract, pursuant to schedules set by the Corporation. Any potential Member can become a Member prior to or in conjunction with such pricing process. Additional pricing opportunities will be available as additional Members, potential Members, or groups of Members join the Corporation’s aggregation, or as existing Members’ supply agreements are up for renewal.

The Parties hereby agree as follows.

1. Sale of Electricity.
 - (a) Members. The Supplier shall be approved to offer and sell electricity to all Members who on or prior to a transactable price offer to enter into a Supply Agreement with the Supplier according to terms and conditions (other than the transactable price, the price structure, length of term, the threshold for over or under usage and any charges therefor, and other matters that the Corporation determines should be left to negotiation with the Member) that have been pre-approved by the Corporation pursuant to one or more executed Participation Confirmations. Supply Agreements are not effective until duly executed by both the Member and the Supplier, and may be executed via facsimile, email or a scanned copy of the original signed Supply Agreement, or other mutually agreed methods by the Supplier and Member for execution of transactions. The Supplier shall begin supply with respect to each Member’s account on or after the meter read date (consistent with Public Utility Commission of Texas rules) for each such Account first following the date set forth in the and pursuant to the terms of the relevant Supply Agreement for the commencement of service.
 - (b) Pricing. Price offer requests will be individually coordinated and negotiated with each Member, potential Member, or group of Members as defined by the Corporation, based upon the needs and availability of favorable pricing levels from the Market. The Corporation and/or its designee will coordinate pricing and Supply Agreement offers between the Supplier and the Members.
 - (c) Terms and Conditions. Each Participation Confirmation between the Parties shall be governed by this Master Terms and Conditions. Any inconsistency between the terms of this Master Terms and Conditions and any executed Participation Confirmation shall be resolved in favor of the terms of the executed Participation Confirmation. Any inconsistency between the terms of any executed Participation Confirmation with any other executed Participation Confirmation shall be resolved in favor of the terms of the executed Participation Confirmation having the latest date of execution. Any amendment to the terms and conditions of a Supply Agreement entered into by a Member shall be subject to prior review and consent of the Corporation, which consent shall not be unreasonably withheld or unreasonably delayed.

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2. Adequate Staffing. The Supplier shall at all times assign adequate staff to perform its obligations hereunder and under the Supply Agreements. The Supplier shall designate a Project Manager who will be the point of contact for the Corporation regarding all activities. The Project Manager will be responsible for supplying activity reports to the Corporation on a pre-determined regularly scheduled basis.
3. Disclosure of Agreements with TDSPs. The Supplier shall disclose promptly upon written request from the Corporation all agreements it may have with any TDSP that may relate to or affect the performance of Supplier's billing and operational obligations hereunder or under any of the Supply Agreements. To the extent a TDSP provides evidence that it is necessary, the Corporation will to the extent allowed by law and subject to the provisions of the Public Information Act enter into reasonable non-disclosure agreements with the Supplier and/or the TDSP with regard to such TDSP agreements.
4. Energy Services. The Corporation believes that the offering of a wide array of energy related services is an important component of the aggregation program. With the approval of the Corporation (not to be unreasonably withheld or delayed), energy related services may be provided to Members by Supplier. Members may contact Supplier for more information should they desire additional information.
5. Term. By executing a Cover Sheet and a Participation Confirmation, the Supplier enters into an agreement with the Corporation for purposes of supplying electricity and electricity related services pursuant to the terms and conditions of this document (the "Contract"). This Contract with a Supplier shall end upon the termination of all that Supplier's Supply Agreements with Members provided, however, that to the extent that the Supplier extends any Supply Agreement or otherwise continues to supply electricity to any present or former Member this Contract shall continue in effect with respect to such present or former Member. Notwithstanding anything to the contrary in this document, either Party may terminate this Contract with thirty (30) calendar days prior written notice to the other Party. In the event that either Party should terminate this Contract in compliance with this paragraph, each Member's individual Supply Agreement shall survive the termination of this Contract and shall remain in effect until the agreed upon expiration date contained in that Supply Agreement.
6. Aggregation Fee. The Supplier, on behalf of the Corporation, shall bill and collect aggregation fees from Members of the Corporation for (a) the purchase of Electricity under Supply Agreements, and (b) the purchase by Members of energy related services as contemplated in Section 4, each set by the Corporation from time to time by written notice to the Supplier ("Aggregation Fees"). The Supplier shall remit to the Corporation all Aggregation Fees for each calendar month to the Corporation on or before the twentieth (20th) Business Day of the following calendar month. Supplier shall have no obligation to enforce or pursue collection on behalf of the Corporation in the event a Member does not pay the Aggregation Fee. If Supplier fails to timely remit such Aggregation Fees, the unpaid balance shall accrue interest on each calendar day past due at a rate equal to six percent (6%) per year, not to exceed the maximum rate allowed by law. Should the Corporation or Supplier terminate this Contract pursuant to Section 5, aggregation fees due under Members' surviving Supply Agreements and offers for supply of electricity shall remain due and payable to the Corporation until the original expiration date of said Supply Agreements. Other fees approved by the Corporation, payable to the Corporation and/or its designee, may be required and added to the commodity cost to cover costs associated with Corporation approved services or products.
7. Monthly Reporting. The Supplier shall provide a monthly usage report to the Corporation consisting of, at a minimum, the following data:
 - (a) Account Name
 - (b) Contract Start Date
 - (c) Contract End Date
 - (d) Date Contract Signed
 - (e) ESID #
 - (f) Supply Rate per kWh (kilowatt hours)
 - (g) Monthly kWhHGACEnergy Fee (\$0.00045 per kWh)

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8. Customer Service; the Corporation's Role. The Supplier shall become the principal point of contact for the Members' electric needs that are the subject of the Supply Agreements. The Parties agree that the Corporation and/or its designee may, at the option of the Corporation and one or more Members, each from time to time, assist such Members in their relations with the Supplier, including without limitation acting as the representative or agent of such Members. In addition, the Supplier acknowledges the Corporation's role as organizer of the Members and/or potential Members, and agrees that the Corporation shall at all times have the right but not the obligation to act as the coordinator and ongoing organizer of the Members and/or potential Members.

The Supplier shall cooperate with the Corporation in all reasonable respects with efforts by the Corporation to monitor the performance of the Supplier hereunder and under the Supply Agreements, including supplying the Corporation upon request with all relevant performance and operational data, including without limitation any agreements between the Supplier and any other entity or person regarding billing, payment calculation, collection and order of payment applicable to payments due from Members, and usage, billing and payment data analyses developed by the Supplier. The Supplier shall at the Corporation's option from time to time provide the Corporation immediately with all information and correspondence provided to Members and/or potential Members, both on an individual and aggregate basis, including without limitation billing, consumption and load data to the extent allowed by law and to the extent not subject to a confidentiality agreement with the relevant Member and/or potential Member. Where Member consents in writing to the release of information, Supplier agrees to obtain from TDSPs and provide to the Corporation all data available to the Supplier requested by the Corporation and the transactions relating to it.

9. Marketing Efforts. The Supplier is encouraged to use reasonable efforts to market the offering of electricity supply hereunder to potential Members. The Corporation shall provide information and materials for Supplier to use for marketing the Corporations energy program. The Corporation may provide a marketing and communication strategy that may include without limitation presentation materials and branded sales collateral for distribution.

10. LIMITATION OF LIABILITY.

(a) NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS, PARTICIPATION CONFIRMATION, ANY SUPPLY AGREEMENT, OR ANY OTHER AGREEMENT RELATING THERETO OR ARISING THEREFROM, THE CORPORATION SHALL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER TO THE SUPPLIER OR ANY SHAREHOLDERS, AGENT OR AFFILIATE OF THE SUPPLIER FOR THE OBLIGATIONS OR ACTS OF ANY ACTUAL OR POTENTIAL MEMBER.

(b) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, WHETHER ARISING IN TORT OR CONTRACT OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH DAMAGES ARISE FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(c) AT NO TIME SHALL THE CORPORATION TAKE TITLE TO ANY ELECTRICITY SOLD THROUGH THIS PROGRAM AND THE ENSUING SUPPLY AGREEMENTS.

11. INDEMNITY. TO THE EXTENT ALLOWED BY LAW, THE SUPPLIER AND THE CORPORATION EACH AGREE TO DEFEND, INDEMNIFY AND SAVE THE OTHER AND ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PARTNERS AND AFFILIATES HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, ACTIONS, JUDGMENTS, LOSSES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES), SUITS OR DAMAGES ARISING FROM OR DIRECTLY RELATING TO THE ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS ARISING FROM OR RELATING TO THE SUBJECT MATTER OF THIS CONTRACT, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY SEEKING SUCH INDEMNITY.

12. Assignment. This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign, delegate or otherwise transfer any of its rights or obligations under this Contract without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

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13. GOVERNING LAW; VENUE. THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, OTHER THAN THOSE RELATING TO CHOICE OR CONFLICT OF LAW, AND THAT THE TERMS OF THIS CONTRACT WERE NOT PREPARED BY ANY PARTY TO THE EXCLUSION OF ONE OR THE OTHER. ANY ACTION AT LAW, SUIT IN EQUITY OR JUDICIAL PROCEEDING ARISING FROM OR IN CONNECTION WITH, OUT OF OR RELATING TO THIS CONTRACT SHALL BE LITIGATED IN THE COURTS OF LAW LOCATED IN HARRIS COUNTY, OF THE STATE OF TEXAS. NOTHING IN THIS CONTRACT SHALL DISPLACE THE APPLICABILITY OF ANY FEDERAL LAW OR THE JURISDICTION OF THE PUBLIC UTILITY COMMISSION OF TEXAS, THE FEDERAL ENERGY REGULATORY COMMISSION, OR ANY OTHER REGULATORY AGENCY OR BODY HAVING JURISDICTION.
14. Headings. The headings contained herein are used solely for convenience and do not constitute a part of this Contract nor shall such headings be used in any manner to aid in the construction of this document.
15. Relationship of the Parties. This Contract shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have the right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
16. Waiver. Any waiver by either Party of performance due by the other Party hereunder shall be without prejudice to the right of that waiving Party to demand future performance which is in strict compliance with the terms hereof.
17. Complete Agreement. This Contract, including the Participation Confirmation and attachments thereto, and the Cover Sheet hereto, constitute the full and complete agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, between the Parties with respect to such subject matter. This Agreement may not be released, discharged, supplemented, amended or modified in any manner except by an instrument in writing signed by a duly authorized representative of each of the Parties hereto.

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PARTICIPATION CONFIRMATION
AN AGREEMENT BETWEEN
H-GAC ENERGY PURCHASING CORPORATION
AND

This Participation Confirmation, dated as of _____, 20 , is between H-GAC Energy Purchasing Corporation (the "Corporation") and _____ ("Supplier").

The Supplier has been selected by the Corporation to offer to sell electricity and related services to Members of the Corporation. By executing this Participation Confirmation the Supplier agrees to all terms and conditions contained in the document entitled Master Terms and Conditions For Retail Supply of Electricity to Members of the H-GAC Energy Purchasing Corporation, Version 3: July 1, 2020 (the "Master Terms and Conditions") and the associated Cover Sheet, and therefore enters into the Agreement to Participate As a Retail Electricity Supplier for Members of The H-GAC Energy Purchasing Corporation with the Corporation pursuant to the Master Terms and Conditions. All terms herein are governed by the definitions in the Cover Sheet and Master Terms and Conditions.

The form of Supply Agreement, and the terms and conditions thereof that have been pre-approved by the Corporation, are reflected in Attachment A hereto, as modified by any First Amendment thereto reflected in any Attachment A-1 hereto, and are incorporated by reference herein. Supplier shall offer the form of Supply Agreement reflected in Attachment A hereto (as may be modified by the amendment thereto reflected in Attachment A-1 hereto) to the individual Members, categories of Members, or both, pursuant to Attachment B hereto and incorporated by reference herein.

IN WITNESS WHEREOF, the Parties have executed (including if feasible by electronic signature) and delivered this Participation Confirmation as of the date first above written, in duplicate originals, each of which shall constitute and be an original, and the persons executing this Contract represent and warrant that they are duly authorized to execute this Participation Confirmation on behalf of the Party they represent and thereby bind that Party to the Master Terms and Conditions.

H-GAC ENERGY PURCHASING CORPORATION

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

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**First Amendment to
Retail Electric Provider’s Supply Agreement**

This First Amendment (the “Amendment”) is to the retail electric provider’s supply agreement (“Agreement”), entitled _____, by and between _____ (“Seller”) and _____ (“Buyer”), and is entered into effective as of the effective date of the Agreement.

In consideration of the mutual promises and agreements contained in this Amendment, the parties hereby agree as follows:

Notwithstanding anything to the contrary in the Agreement (including any attachments, exhibits, or addendum thereto and any sales or transaction confirmations related thereto), Seller agrees with Buyer that the following numbered provisions shall supersede and control any provisions in the Agreement inconsistent with the terms of this Amendment:

All other terms and conditions of the Agreement not expressly modified in this Amendment shall remain in full force and effect.

This Amendment is binding on and inures to the benefit of the parties and their respective successors and permitted assigns, shall be governed by the laws of the State of Texas without reference to its conflicts of law provisions, and may be executed in duplicate originals (each of which shall constitute and be an original).

The persons executing this Amendment represent and warrant that they are duly authorized to execute this amendment on behalf of the party they represent and thereby bind that party to this Amendment.

Seller

By: _____
Name: _____
Title: _____
Date: _____

Buyer

By: _____
Name: _____
Title: _____
Date: _____

Members

The form of Supply Agreement included with this Participation Confirmation (indicated as Attachment A thereto), will be offered by Supplier to any the political subdivisions of the State of Texas that are or will become a Member of the Corporation by resolution, including, but not limited to, municipalities, counties, school districts, college districts, hospital districts, municipal utility districts, and other special districts.