

THIS AGREEMENT IS CONFIDENTIAL AND MAY BE EXEMPT FROM DISCLOSURE UNDER THE PUBLIC INFORMATION ACT: DO NOT DISCLOSE ANY PROVISION HEREIN WITHOUT FIRST CONTACTING THE GENERAL LAND OFFICE

**TEXAS GENERAL LAND OFFICE  
RETAIL SALES INTERLOCAL AGREEMENT**

GLO CONTRACT NO. 18-284-000-A946

**CUSTOMER:** Texas Facilities Commission  
Mailing addr: 1711 San Jacinto Blvd  
Physical addr: Austin, TX 78701

Contact Name: Farshad Shahsavary  
Tel: 512-463-7366  
E-mail: [Farshad.Shahsavary@tfc.state.tx.us](mailto:Farshad.Shahsavary@tfc.state.tx.us)

**SELLER: Texas General Land Office**  
Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, TX 78701-1495

Contact Name: Contract Manager  
Tel: 512-463-5042  
Fax: 512-475-1543  
E-mail: [electricandgas@glo.texas.gov](mailto:electricandgas@glo.texas.gov)

The Retail Sales Agreement, the General Terms and Conditions and all attachments thereof constitute the entire "**Agreement**" between the parties with respect to the subject matter covered therein and supersedes all prior communications, representations or agreements, verbal or written. No party has made any representations or promised to do any act not contained in this Agreement. Except as expressly provided for herein, this Agreement cannot be modified or amended except in writing signed by both parties.

When used with initial capitalization, whether in the singular or the plural, such capitalized terms used in the Agreement will have the meanings set forth in the Retail Sales Agreement, General Terms and Conditions or attachments thereto.

**POWER SALES:** Customer agrees to purchase and Seller agrees to sell all of Customer's electricity requirements for the Delivery Points during the Term stated below. Seller shall sell and Customer shall purchase and receive electric energy for Customer's facility(ies) specified per Exhibit "D" ("Delivery Point(s)") at the price(s) per kilowatt hour (kWh) specified in Exhibit "E" ("Contract Price"). The electric energy will be delivered to Customer's meter(s) whereupon Customer shall be deemed to have full possession and control of such energy.

**TERM:** This Agreement will be effective on the date it is signed by the Texas Land Commissioner or his designee (the "**Effective Date**"). The term will commence on the Start Date, or, if a switch is not required, on the first meter read on or after February 1, 2018, and will expire, unless earlier terminated, on the first meter read date after January 31, 2023 for each Delivery Point ("**Initial Term**"). The Parties agree and acknowledge that the Term may commence prior to the Effective Date and in that event will have the same effect as if it commenced after the Effective Date. This Agreement may be terminated at any time prior to expiration of the Term in the circumstances specified in, and subject to the terms and conditions in the Default and State Funding provisions of the General Terms and Conditions. If any Delivery Point(s) have not been switched to a new REP at the end of the Initial Term, then Seller may continue to sell Energy to Customer for the Delivery Points, in accordance with this Agreement, and this Agreement will continue in effect for successive one month terms (collectively, the "**Transition Term**") until all Delivery Point(s) are switched to a new REP. The Initial Term and the Transition Term are collectively the "**Term**." The Contract Price for each month of the Transition Term (the "**Transition Charge**"), together with any new product terms, will be posted on the Site. It is the Customer's responsibility to access the Site for Transition Charge information. At any time after the end of the Initial Term, if allowed by Law, Seller may terminate the Agreement by transferring any remaining Delivery Point(s) to the POLR or the appropriate REP.

**EXTENSION OF TERM:** Customer and Seller may extend this Agreement, if prior to the expiration of the Term, Customer and Seller agree to an extension period and new Price that would be effective for

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the remainder of the Term and/or such extension period provided that (i) no Default has occurred and is continuing and (ii) Customer is otherwise eligible by law and regulation to receive the extension and new Contract Price under the terms of the Agreement. This Agreement must be amended in a document signed by the Parties to effectuate the Term extension and new Contract Price.

**CONTRACT PRICE:** For all power deliveries under this Agreement during the Term, Customer agrees to pay Seller the Contract Price described in Exhibit "E".

**THE PERSON SIGNING THIS AGREEMENT ON BEHALF OF THE CUSTOMER CERTIFIES THAT HE OR SHE IS AUTHORIZED TO LEGALLY OBLIGATE THE CUSTOMER.**

**TEXAS GENERAL LAND OFFICE  
SELLER:**

**TEXAS FACILITIES COMMISSION  
CUSTOMER:**

By:   
Mark A. Havens  
Chief Clerk/Deputy Land Commissioner

By:   
Name: Harvey Hilderbrum

Title: EX Director

Date: 2/5/2018

Date: 1/23/18

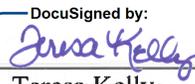
SA  Deputy 

DIV  GC 

Legal:   
Date: 1/23/18

**THE PERSON SIGNING THIS AGREEMENT ON BEHALF OF CAVALLO CERTIFIES THAT HE OR SHE IS AUTHORIZED TO LEGALLY OBLIGATE CAVALLO.** Cavallo is a signatory to this Agreement for purposes of acknowledging its obligations to accept assignment as provided in the General Terms and Conditions.

**CAVALLO:  
CAVALLO ENERGY TEXAS LLC**

By:   
Teresa Kelly

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**GENERAL TERMS AND CONDITIONS FOR  
TEXAS GENERAL LAND OFFICE RETAIL SALES INTERLOCAL AGREEMENT**

**Definitions:**

**"Actual Consumption"** means all energy delivered pursuant to this Retail Sales Agreement as measured by the local TDSP at the TDSP's meters located at each Delivery Point.

**"Contract Quantity"** means Customer's expected monthly kWh electricity consumption for the Term. Customer's expected consumption may be set out on **Exhibit "A"**. If **Exhibit "A" is left blank**, Contract Quantity will be determined by reference to the 12 months of electricity consumption at all Delivery Points before the Effective Date, or for new facilities, information from Customer and electricity consumption of comparable facilities, each as may be adjusted in accordance with this Agreement.

**"Costs"** means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement and attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement.

**"Default Service"** means the bundled electric service provided by POLR to Customer if Customer fails to obtain energy from a REP, including Cavallo.

**"Delivery Points"** Delivery Points served pursuant to this Agreement are set out on Exhibit "D", attached hereto and as amended from time to time pursuant to this agreement. The Delivery Points for electricity shall be the actual Customer meter. Pursuant to the nodal market structure, as defined by ERCOT, the Delivery Points for purposes of pricing as set forth on Exhibit E shall be to the Hub in which each meter is located. Seller agrees to schedule and deliver to the Customer's meter, however Customer shall be responsible for any difference in cost between the Hub and the actual meter, with such differences, if any, passed through to the Customer without markup.

**"End Date"** means the date on which Seller instructs the TDSP, and/or ERCOT to cease delivery of Energy to Customer on behalf of Seller with respect to each Delivery Point, thereby fully switching Customer to another seller, to the POLR, or to end service to any or all Delivery Points.

**"ERCOT"** means the Electric Reliability Council of Texas.

**"Force Majeure"** means any event or circumstance which, in the exercise of due diligence, is beyond the reasonable control of the Party claiming excuse, and which partially or entirely prevents that Party's performance of its obligations, and includes acts of God; strikes, lockouts or other industrial disturbances or labor disputes; acts of public enemy, terrorism, wars, blockades, insurrections, civil disturbances and riots, and epidemics; landslides, lightning, earthquakes, fires, storms, hurricanes and threats of hurricanes, floods and washouts; arrests, orders, requests, directives, restraints and requirements of the government and governmental agencies, either federal or state, civil and military (but excluding, with respect to obligations of Seller, any such directive, restraint or requirement imposed by Seller); failure of necessary transmission or distribution facilities that prevents the delivery of electricity hereunder; failure of the TDSP to deliver electricity, demonstrable outages of computer control equipment and/or databases and telecommunication equipment necessary for transmission or receipt of electronic control signals but only to the extent such outage prevents the delivery of electricity; reductions or interruptions in service as a result of emergency conditions which are necessary to protect generating or transmission facilities or the reliability of transmission facilities, and other causes of a similar nature not reasonably within the control of the Party claiming suspension.

**"Kilowatt hour" (kWh)** means one thousand watts of electric energy or electricity used in one hour.

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"**Law**" means any law, statute, regulation, rule, ERCOT protocol, exchange rule, decision, writ, order, decree, or judgment, or any interpretation thereof by any court, agency, or instrumentality having jurisdiction, including ERCOT.

"**Losses**" means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, to such Party resulting from the termination of this Agreement determined as provided in clauses (b) and (c) of "Remedies Upon an Event of Default" in the **General Terms and Conditions**.

"**Party**" means either Seller or Customer.

"**Parties**" means Seller and Customer.

"**POLR**" or "**Provider of Last Resort**" means any Retail Electric Provider designated under the Public Utility Regulatory Act ("PURA") that are required to offer electricity to any requesting customer in its territory

"**PUC**" means the Public Utility Commission of Texas.

"**PUC Tariff**" means the tariff for the TDSP filed pursuant to PUC Subst. Rules Sect. 25.431 and approved by the PUC on May 18, 2001 or a successor tariff thereto.

"**REP**" or "**Retail Electric Provider**" means a seller of electricity that is permitted to lawfully sell and schedule delivery, or cause to be scheduled for delivery, of electricity to electric customers located in the State of Texas.

"**Seller**" shall mean the Texas General Land Office, acting through its representative, Cavallo Energy Texas LLC, a Texas company ("**Cavallo**") and is sometimes referred to herein as "we" "us" and "our."

"**Site**" means the Seller's website located at <http://www.glo.texas.gov/CTRANS/>.

"**Start Date**" means the date that all actions have been taken by the TDSP, and/or ERCOT for Seller to sell and schedule delivery, or cause delivery to be scheduled, of Energy to Customer with respect to each Delivery Point and for Customer to purchase and receive, or cause to be received, such Energy from Seller for such Delivery Points, including, fully switching Customer to Seller by ERCOT.

"**Transmission and Distribution Service Provider**" or "TDSP" means the entities and any successors thereto transmitting or distributing Energy on behalf of Seller or Customer to a Delivery Point, including, transmission and distribution utilities, municipally owned utilities, and electric cooperatives whose distribution systems are currently interconnected with Delivery Points.

As used herein, all other specific ERCOT terms have the meanings set forth in the Texas Nodal Protocols approved by PUCT, as of October 1, 2006, as amended.

**Scope:** Subject to the provisions of this Agreement and any applicable PUC Tariffs, we agree to sell and you agree to purchase your electricity requirements for the Delivery Points during the term of this Agreement.

**Payment:** Seller agrees to directly bill Customer on a monthly basis for its electric service in accordance with the Agreement, utilizing the TDSP's billing cycle. As soon as practicable after the end of each billing cycle, Seller agrees to render to Customer a statement setting forth the Customer's Actual Consumption delivered to Customer during the most recently completed billing cycle. Customer agrees to pay Seller for Actual Consumption during and through the contract Term.

All payments will be remitted pursuant to the invoice instructions and in accordance with Chapter 2251 of the Texas Government Code which provides that a payment by a governmental entity is overdue on the 31st day after the later of:

- (1) the date the governmental entity receives the goods under the contract;
- (2) the date the performance of the service under the contract is completed; or
- (3) the date the governmental entity receives an invoice for the goods or service.

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If Customer, in good faith, disputes a payment, then under Government Code Section 2251.042:

- (a) A governmental entity shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice.
- (b) If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice submitted by the vendor beginning on the date under Section 2251.021 that the payment for the invoice is overdue.
- (c) If a dispute is resolved in favor of the governmental entity, the vendor shall submit a corrected invoice that must be paid in accordance with Section 2251.021. The unpaid balance accrues interest as provided by this chapter if the corrected invoice is not paid by the appropriate date.

If Customer, in good faith, disputes any amount on any statement, in accordance with Government Code Section 2251.042, Customer will pay Seller the greater of (a) the undisputed amount, and (b) the amount of the prior month's statement, which latter amount may not exceed the total amount of the current disputed invoice. Seller promptly will provide supporting documentation and such other information as Customer may reasonably request for purposes of verifying the disputed amount. Any disputed and withheld amounts, if determined to have been billed properly, will be paid by Customer to Seller promptly together with interest from the original due date at the rate of one percent per month. Any amounts improperly billed and collected from Customer will be credited to Customer against its next bill, together with interest at the rate of one percent per month.

**TDSP Metering:** All energy delivered hereunder ("Actual Consumption") shall and can only be, measured by the local TDSP at the TDSP's meters located at each Delivery Point. Actual Consumption shall be the primary method of calculating the monthly charges for Customer. However, Seller may use estimated Actual Consumption if measurements of Actual Consumption are not received timely from the TDSP and in which case, Seller will make appropriate adjustments upon receipt of Actual Consumption; provided however, that Seller will not utilize an estimated Actual Consumption that exceeds the historical Actual Consumption for the meter or meters in question for the same or approximately same billing periods in the immediately preceding year. Seller may adjust invoices for any Actual Consumption measurement errors in accordance with TDSP rules. Although Seller cannot guarantee a switch of Customer's account to Seller will occur by a specific date and Seller shall not be liable for delays in this process caused by ERCOT or the TDSP, Seller and Customer will employ all resources reasonably available to them on a commercial basis to effect a timely switch of Customer's account from existing provider to Seller.

**Contract Performance; Representations:** Except for the payment of money due hereunder, the Parties' performance of their respective obligations in this Agreement will be excused for Force Majeure events that prevent such Party's performance. The Party experiencing difficulty due to a Force Majeure event must notify the other Party within three (3) business days, attempt to promptly cure the Force Majeure event with all due diligence and exercise reasonable efforts to mitigate or limit the adverse effects of such Force Majeure event as well as informing Seller of such efforts.

Customer represents that all information supplied to Seller is correct and that Customer is (i) validly existing, (ii) financially able to continue in business, (iii) unaware of any situation which would alter its financial abilities and have not filed, planned to file or have had filed any bankruptcy proceeding, (iv) will utilize electricity substantially consistent with historical practice and (v) authorized to enter into this Agreement.

Any portion of this Agreement that may be deemed to be unenforceable or illegal will not affect the enforceability or legality of the remaining terms and conditions.

Seller represents that the electricity being sold to Customer will have been delivered to the TDSP in accordance with applicable law. **The foregoing is in lieu of all warranties, expressed or implied, in fact or by law with respect to the electricity delivered hereunder, including but not limited to any warranty as to the merchantability of the electricity or the fitness of the electricity for any particular use or purpose.**

THIS DOCUMENT REPRESENTS THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THIS AGREEMENT MUST BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS EXCLUDING ANY CONFLICT OF LAW RULES THAT WOULD REQUIRE REFERENCE TO THE LAWS OF ANOTHER JURISDICTION. VENUE OF ANY SUIT BROUGHT FOR BREACH OF THIS AGREEMENT IS FIXED IN ANY COURT OF COMPETENT JURISDICTION IN TRAVIS COUNTY, TEXAS; PROVIDED, HOWEVER, THE FOREGOING MAY NOT BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY SELLER.

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**Liabilities:** Seller acknowledges the importance to Customer of a consistent supply of electricity to its Delivery Points, and Seller will employ all resources reasonably available to it on a commercial basis to provide a consistent supply of electricity, subject to the other terms and conditions of this Agreement. Notwithstanding, Customer acknowledges that Seller exercises no independent control over TDSP's Facilities necessary for delivery of electricity, and Customer recognizes that Seller will have no liability or responsibility for service interruptions, fluctuations, termination or deterioration in the generation of electricity or its transmission or deterioration of service caused by any factor beyond Seller's control, including but not limited to failure of the TDSP's transmission and/or distribution system that delivers electricity to Customer.

LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE WILL BE LIMITED TO DIRECT ACTUAL DAMAGES. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY NOR INDIRECT DAMAGES. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

**Default:** A "Default" has occurred if: (i) either Seller or Customer fails to perform any material term or condition of this Agreement (including but not limited to switching to another provider prior to end of Initial Term), provided that such failure is not caused by a Force Majeure event or cured within 30 days of written notice by the other Party or within another period as may be mutually agreed upon by Seller and Customer, or (ii) Customer voluntarily or involuntarily becomes bankrupt or is forced into bankruptcy, is placed into receivership, or becomes otherwise insolvent.

**Remedies Upon an Event of Default:** (a) In the event of default under this Agreement by Seller or Customer, the other Party may (i) terminate this Agreement ("**Termination**"), (ii) suspend performance and, to the extent allowed by law, drop Customer to Default Service, or withhold any payments due, and/or (iii) to the extent allowed by law, disconnect, or cause to be disconnected, Delivery Points from electric service. Termination will be effective upon the earlier of the date of notice of termination or such other date as may be required under law or TDSP procedures for switching electric suppliers ("**Termination Date**"). In the event Seller terminates this Agreement due to Customer's default, Customer assumes all obligations to arrange for its electric supply. Upon termination, the non-defaulting Party may in good faith calculate its actual damages resulting from the termination of this Agreement, in the manner set forth below.

(b) If the defaulting Party is Customer, the damages of GLO will be equal to the sum of the Costs plus the Losses, if any, determined by subtracting (i) the present value of a replacement contract calculated by using the equivalent Contract Quantities of energy and Delivery Points and relevant market prices for the remaining period of the Term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for this Agreement (the "**Replacement Contract**") from (ii) the present value of this Agreement calculated by using the remaining period of the Term, Customer's Energy Requirements (based on Customer's Contract Quantity for each of the Delivery Points) had it not been terminated (the "**Terminated Agreement**").

(c) If the defaulting party is GLO, the damages of Customer will be equal to the sum of the Costs plus the Losses, if any, determined by subtracting the present value of the Terminated Agreement from the present value of the Replacement Contract.

(d) To ascertain the market prices of a Replacement Contract, the non-defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX futures contracts, quotations from leading dealers in energy swap contracts and other bona fide third party offers, all adjusted for the remaining period of the initial term or any renewal terms, as applicable, and differences in transmission. Present value will be discounted at the US\$ Utility BBB2 rate which corresponds to the time period closest to the remaining period of the Term plus 1 percent. It is expressly agreed that a Party will not be required to enter into a Replacement Contract in order to determine the Termination Payment (as hereafter defined). The non-defaulting Party will aggregate such Losses and Costs with respect to this Agreement (determined as set forth above) into a single net amount and notify the defaulting Party. If the non-defaulting Party's aggregate Losses and Costs exceed its aggregate gains, the defaulting Party must, within 30 Business Days of receipt of such notice, pay (as liquidated damages for default hereunder and not as a penalty) the net amount (the "**Termination Payment**") to the non-defaulting Party, which amount will bear interest at the rate of one percent per month from the Termination Date until, but excluding, the date paid. If the non-defaulting Party's aggregate gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the amount of the Termination Payment will be zero. If the defaulting Party disagrees with the calculation of the

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Termination Payment, the issue must be submitted to mediation in accordance with the procedures set forth in these **General Terms and Conditions**, and the resulting Termination Payment will be due and payable within 3 Business Days after the resolution of the dispute.

**Assignment to Cavallo:** Notwithstanding anything to the contrary in this Agreement, if, subsequent to the date of this Agreement, Seller (1) is prohibited by law from selling electricity to Customer, or (2) is in Default under this Agreement, Seller, Customer and Cavallo agrees that Cavallo will sell electricity directly to Customer at the same Contract Price and upon the terms and conditions contained in Cavallo's then standard contract for electricity sales for the remainder of the Term of this Agreement. In this event, Customer shall have incurred no actual damages.

**Change in Law:** If a Party or its activities related to this Agreement are affected by any Law enacted after the Effective Date ("**Change in Law**") that makes performance of this Agreement unenforceable or illegal, then either Party, without any payment obligation or other liability (other than payment for Energy received and performance of other transactions or other obligations incurred before termination), may terminate this Agreement without consent of, and upon Notice to, the other Party, upon the earlier of 60 days prior Notice or other prior Notice effective on the date the Change in Law becomes effective; provided that Seller will exercise this termination right only if it is unable, after commercially reasonable efforts, to effect an assignment of this Agreement to Cavallo pursuant to the immediately preceding paragraph before the Change in Law becomes effective. If a Change in Law occurs, or a PUC, ERCOT or other regulatory decision, action or implementation occurs relating to the wholesale or retail electricity market in ERCOT resulting in new or modified fees, costs of performance, or other charges being incurred by Seller and other ERCOT market participants, then to the extent incurred by Seller, all of the incremental amounts may be reasonably allocated and billed to Customer as an authorized charge or adjustment to the Contract Price without prior notice to Customer, as soon as those charges are billed to Seller.

**Regulatory Events:** If subsequent to the effective date of this Agreement, there is a Change in Law, administrative regulation, rule, TDSP tariff or charges, ERCOT design or structure, order, judicial decision, statute, or a change in an interpretation or application of any of the foregoing (collectively, a "Regulatory Event") and such Regulatory Event causes Seller to directly or indirectly incur any capital, operating, commodity or other costs (including, but not limited to Taxes) relating to the provision of services contemplated herein materially different from those existing prior to the date of the Regulatory Event, then Seller may promptly pass through to Customer the direct economic effects (positive or negative) of any such Regulatory Event. Seller shall promptly provide a written explanation of the Regulatory Event and the calculation of the pass through amount, as well as documentation supporting the existence of the Regulatory Event and the change in costs.

**Representations of GLO:** GLO represents as part of this Agreement that, (1) the services specified above are necessary and essential and are properly within the statutory functions and programs of GLO, (2) the proposed arrangements serve the interest of efficient and economical administration of GLO, and (3) the services, supplies or materials contracted for are not required by TX. CONST. Art. XVI, § 21 to be supplied under contract to the lowest responsible bidder.

GLO further represents that it has authority to enter into this Agreement by virtue of the authority granted in TEX. NAT. RES. CODE §52.133 and TEX. UTIL. CODE § 35.101 *et seq.*, and that it has reviewed and approved this Agreement pursuant to § 31.401, TEX. NAT. RES. CODE and 31 TEX. ADMIN. CODE § 8.1 *et seq.*

**Confidentiality:** This Agreement and its terms are confidential except to the extent disclosure is necessary for its implementation or disclosure is otherwise required by law.

**Notices:** Notices under this Agreement must be hand delivered or transmitted by the U. S. Mail to the addresses contained in the Retail Sales Agreement.

**Miscellaneous:** Customer agrees to obtain and maintain any approvals or authorizations Customer may need.

**Dispute Resolution:** If a dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within 14 days of the written notification, Seller may require the issue(s) be mediated. In that event, Seller must notify Customer and furnish Customer with the names of three mediators acceptable to Seller. Within 10 days of such notice, Customer must select a mediator from the list provided by Seller and notify Seller. The mediation must occur within 30 days of such notification. Prior to the mediation, each Party will provide the mediator with a statement of issues to be mediated,

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along with any other information/releases required by the mediator. The Parties agree to bear equally the cost of the mediator. Any dispute resolution must be conducted in accordance with the provisions the Governmental Dispute Resolution Act, TEX. GOV'T CODE § 2009.001 (1999).

**Prior State Employment:** Customer certifies no employee of Customer that has been an employee of GLO within the past year has been or will be materially involved in either the negotiation of or the activities contemplated by this Agreement.

**State Funding:** This Agreement may not be construed as creating any debt on behalf of the State of Texas and/or GLO in violation of TX. CONST. Art. III, § 49. In compliance with TX CONST. Art VIII, § 6, it is understood that all obligations of the State hereunder are subject to the availability of State funds. If such funds are not appropriated or become unavailable, this Agreement may be terminated. In that event, the Parties will be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

**Documentation of Amendments:** Except for matters that pursuant to express provisions hereof may be conducted by oral agreement between the Parties, no amendment, modification, or change will be enforceable unless reduced to writing and executed by the Parties; provided, the Parties agree that amendments to add or delete Delivery Points may be implemented as follows. Amendments to **Exhibit "D"** may be formed and effectuated pursuant to an email transmission from Customer to Seller requesting that a Delivery Point be added or deleted and attaching the addition/deletion form to be provided by Seller (the "**Email Request**") and Seller accepting the Email Request in a responsive email transmission attaching amended **Exhibit "D"** (the "**Email Confirmation**"). The Parties will be legally bound by the amended **Exhibit "D"** from the time Seller transmits them to Customer, and if Seller does not transmit same, no amendment by email transmission will be binding upon the Parties. The Email Request and Email Confirmation are adopted by the Parties as the means by which the Parties' amendment of **Exhibit "D"** may be reduced to writing and the Parties agree not to contest or assert a defense to the validity or enforceability of such amendment entered into in accordance herewith. Each Party represents that each of its representatives charged with implementing the foregoing has authority to effectuate the foregoing amendment type by email transmission.

**Termination of Agreement:** This Agreement may be terminated by Customer at or after the end of the Initial Term by causing a switch of all Delivery Points to a new REP.

**Counterparts:** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party hereto will constitute a valid and binding execution and delivery of this Agreement by such Party. Such facsimile copies will constitute enforceable original documents. Notwithstanding the foregoing, the Parties to this Agreement agree to use commercially reasonable efforts to exchange signed original documents after facsimile execution of this Agreement.

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**EXHIBITS TO RETAIL SALES AGREEMENT**

**Customer:** Texas Facilities Commission **Contract Date:** January 23, 2018

**EXHIBIT "A"**

**Initial Term** 60

**Start Date:** February 1, 2018

**End Date:** January 31, 2023

**Consumption Variance Allowance:** N/A

**Contract**

**Quantity:** The monthly kWh quantity per ERCOT congestion zone shown below.

	Congestion Zone			
	Houston	South	North	West
Jan	318,730	0	258,443	0
Feb	281,515	0	217,046	0
Mar	304,952	0	229,024	0
Apr	291,802	0	213,664	0
May	307,462	0	218,669	0
Jun	326,799	0	254,683	0
Jul	351,089	0	277,620	0
Aug	347,565	0	286,433	0
Sep	322,802	0	249,051	0
Oct	325,652	0	242,992	0
Nov	284,082	0	239,771	0
Dec	310,790	0	254,808	0
Annual	3,773,240	0	2,942,203	0
<b>Total Term</b>	<b>18,866,202</b>	<b>0</b>	<b>14,711,016</b>	<b>0</b>

**EXHIBIT "B"**

**ERCOT Costs (included in Contract Price)**

Energy	Transmission and Distribution Line Losses	
REP Administration and Margin Fees	Unaccounted for Energy	Nodal Implementation Surcharge
Renewable Energy Charge	ERCOT Administration Fee	Gross Receipts Tax Reimbursements
Regulation Up Service Charge	ERCOT Credit Requirements	PUC Assessment Fee Reimbursements
Regulation Down Service Charge	PUCT Credit Requirements	
Non-Spinning Reserve Service Charge	Qualified Scheduling Entity Fees	
Responsive Reserve Service Charge	Balancing Energy Neutrality Adjustment	
Black Start Capacity Charge	EILS Uplift	
RMR Reserve Service Charge	Reliability Unit Commitment (Non-Index Products)	

**EXHIBIT "C"**

Pass-through Charges (passed through at cost)

TDSP Charges - regulated by Public Utility Commission of Texas and imposed and invoiced by the TDSP(s)

Transmission and Distribution Charges	Utility-imposed Reactive Power Charges	Sales Taxes (Not Applicable)
Transmission Cost Recovery Factor	Excess Mitigation Credits	
Competitive Transition Charges	System Benefit Fund Charges	
Meter Charges	Nuclear Decommissioning Charges	
Transition Charges	Charges for services, repairs & equipment	
Customer Charges	Other Charges TDSP(s) may impose from time-to-time	
Municipal Franchise Fees	Advanced Metering Cost Recovery Factor	
	Hub to Load Zone Basis	

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## TEXAS FACILITIES COMMISSION

**EXHIBIT "D" January 23, 2018**

**Delivery Point(s)**

<b>No.</b>	<b>ESI ID</b>	<b>SERVICE ADDRESS</b>	<b>CITY, STATE, ZIP</b>	<b>CONGESTION ZONE</b>
1	1008901000146560016100	5425 POLK	HOUSTON,TX,77023	Houston
2	1008901019146854110100	5420 POLK ST	HOUSTON,TX,77023	Houston
3	1008901023804102150100	5427 POLK ST	HOUSTON,TX,77023	Houston
4	10443720005311927	2826 N BEACH ST	HALTOM CITY,TX,76111	North
5	10443720005470548	2826 N BEACH ST	HALTOM CITY,TX,76111	North
6	10443720005470579	2826 N BEACH ST	HALTOM CITY,TX,76111	North
7	10443720006358643	1501 CIRCLE DR	FORT WORTH,TX,76119	North
8	10443720006991218	801 AUSTIN AVE BLDG MAIN	WACO,TX,76701	North
9	10443720007069772	801 AUSTIN AVE	WACO,TX,76701	North
10	10443720007069803	801 AUSTIN AVE	WACO,TX,76701	North

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<b>EXHIBIT "E"</b>
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## FIXED PRICE PRODUCT

### SELLER INVOICE

Seller will invoice Delivery Points on a monthly basis. Invoices may consist of the following components:

1. Contract Price (the per kWh price shown below);
2. Charges listed in Exhibit "C";
3. Any additional charges that are expressly authorized in this Agreement.

**Pricing:** Customer will pay the Contract Price times the Actual Consumption. This Contract Price is \$0.03658 per kWh and includes energy commodity charges and the initial costs listed on Exhibit "B". The costs in Exhibit "C" will be passed-through to Customer without markup. Customer may have involved a broker, aggregator or consultant in the negotiation of this contract and such fees or commissions are included in the Contract Price unless listed as a pass-through on Exhibit "C". Seller may, pursuant to the Regulatory Events clause of the Agreement, pass through without markup any increases in those costs and charges in Exhibit "B" during the Term of the Agreement. Seller may also, during the Term of this Agreement, adjust any Transmission and Distribution Charges included in Exhibit "B" to reflect implemented increases or reductions in tariff rates and changes in demand or other delivery components that occur during the Term.

**Renewable Energy Credits:** During the term, Cavallo, or an affiliate, will retire Renewable Energy Credit(s) (as defined in the ERCOT Protocols, ("RECs")) on behalf of Customer from Renewable Energy Resources, as defined in PUCT's substantive rules applicable to REPs, equal to 100% of the Contract Quantities. These REC retirements are in addition to other renewable portfolio requirements imposed upon Cavallo under Texas law or PUCT rules.

**Transition Charge and Consumption Variance Pricing:** For periods during the Initial Term which Actual Consumption within a Congestion Management Zone varies from the Contract Quantity by a percentage greater than the Consumption Variance Allowance as shown on Exhibit "A", or for periods in which Actual Consumption occurs after the period between the Start Date and the End Date of the Initial Term, as listed on the Exhibit "A", Seller will charge, and Customer will pay the ERCOT Rate. The adder will be posted on the Site during the Term. The costs in Exhibit "C" will be passed through without markup. In the event of excess or deficient usage, if ERCOT charges certain incremental Ancillary Services for under or over procured loads, then Seller may also pass through these Ancillary Services to Buyer without markup.

**Load Change Notification:** Customer will promptly notify Seller of any event or circumstance that is likely to cause a significant change to the load at any Delivery Points(s) (a "Notice of Load Change"), including Customer's plans for new construction, facility replacement or equipment modification, planned closures, applications for new construction permits, or new environmental limits.

If Customer has a change in usage of 25% or more for two consecutive months; Seller may pass through the resulting cost increase to Customer. If Seller elects to pass through such cost increases, Seller will calculate the amount of such cost in a commercially reasonable manner and submit to Customer, which invoice will be due and payable pursuant to the payment terms of this agreement.

**Adding and Deleting Delivery Points:** Customer is permitted to add new Delivery Points at the Contract Price, or delete Delivery Points as a result of a sale or closure without any form of termination payment

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provided that (i) there is no Event of Default by Customer, (ii) any such Delivery Point to be added is located within the ERCOT area currently served by Seller; (iii) the aggregate volume of addition of Delivery Point(s), or deletion of Delivery Point(s) listed on Exhibit "D", does not exceed five (5) percent of the contract quantities specified in Exhibit "A", and (iv) such deletions are, in the reasonable judgment of Seller, for operational reasons and not an effort to access lower energy rates.

## DEFINITIONS

**"Ancillary Services"** means, for each Delivery Point, all charges assessed by ERCOT for services necessary to maintain reliable operation of the transmission system in order to support the transmission of Energy from the source of generation to the points of demand.

**"Congestion Management Zone"** means the applicable congestion management zone as defined by ERCOT for the applicable Delivery Points and delivery period.

**"ERCOT Rate"** means the volume weighted sum of the Real Time Settlement Price (RT LMPZ) applicable to the Delivery Points for the specific delivery period, plus the applicable Exhibit "B" and "C" items, which may include retail margin, energy losses, capacity charges, RUC, replacement reserves, broker fees and commissions, congestion charges, ancillary service charges, ERCOT administrative fees, and delivery charges and other charges incurred by Seller for the Actual Consumption.

**"Transmission and Distribution Charges" or "TDSP Charges"** means, for each Delivery point, all transmission and distribution charges and other cost recovery charges and fees outlined in the TDSP's tariff and billed to Seller for TDSP's services to deliver Energy to the applicable Delivery point; .

## CUSTOMER'S ACKNOWLEDGMENT

Customer acknowledges that Seller's representatives are in the business of buying and selling power within the ERCOT market for each of their own accounts and that such participation in the foregoing market may affect the calculation of the Day Ahead Settlement Price (DAM LMPZ) or Real-Time Settlement Point Prices (RT LMPZ). Notwithstanding the foregoing, Customer agrees to pay the amounts provided for in this Agreement that may be based upon the DAM LMPZ or RT LMPZ, as promulgated by ERCOT. Subject to the right of Customer to dispute a Seller Invoice as set forth in this Agreement, Customer will not withhold payment for any reason, including, investigatory activities undertaken by ERCOT or PUCT, based on Seller's representatives' participation in the market and its effect on RT LMPZ. Nothing in this Agreement restricts Seller or any of Seller's representatives from participating in ERCOT market activities that may affect the DAM LMPZ or RT LMPZ.