

# 791 PURCHASING COOPERATIVE VENDOR AGREEMENT

Between *Reliant Energy Retail Services, LLC*

with the principal place of business at

910 Louisiana Street, Houston, TX 77002 and

**791 Purchasing Cooperative**

DATED July 7, 2020

**For**

**RFP # 791-2020-03-001 Retail Electric Power**

**Issued: March 6, 2020**

## General Information

The Vendor Agreement (“Agreement” or “Contract”) made and entered into by and between 791 PURCHASING COOPERATIVE (hereinafter referred to as “791COOP”) a government cooperative purchasing program authorized by the Region 15 Education Service Center, having its principal place of business 612 Irene Street San Angelo TX 76903 and *Reliant Energy Retail Services, LLC* (hereinafter referred to as “Vendor”) a retail electric provider having its principal place of business as listed at the top of page one (each, a Party and collectively, the Parties). This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

The vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the Solicitation (RFP, RCSP, RFQ) as posted, including any addenda and the awarded vendor’s proposal. This document shall supersede any conflict in the solicitation document.

The following pages will constitute the Agreement between the successful vendors(s) and 791 PURCHASING COOPERATIVE.

# Terms and Conditions

## **Assignment of Vendor Agreement**

No assignment of the Vendor Agreement may be made by either Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, except it may be assigned or transferred without such approval: (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets (including, without limitation, all or a substantial portion of Vendor's portfolio of retail supply contracts) of the transferring Party, whether by merger or acquisition, (ii) by either Party to any affiliate; or (iii) by Vendor in connection with any financing or other financial arrangements involving the accounts, revenues or proceeds hereof; provided, that in the case of items (i) and (ii), the assignee or transferee shall be at least as creditworthy as the assigning or transferring Party and such assignee or transferee shall agree in writing to be bound by the terms and conditions of this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

## **791 PURCHASING COOPERATIVE Retail Power Contract**

The 791 PURCHASING COOPERATIVE Retail Power Contract is the final negotiated version of the Vendor's retail power contract that was submitted as part the RFP for Retail Electric Provider(s) and negotiated with 791 PURCHASING COOPERATIVE as set forth in Attachment B. The 791 PURCHASING COOPERATIVE Retail Power Contract will govern all aspects of a sale of electricity between Vendor and a 791 PURCHASING COOPERATIVE member who has agreed to purchase electricity from Vendor through the 791 Purchasing Cooperative preferred retail supplier program (a "791 Purchasing Cooperative Member"). 791 PURCHASING COOPERATIVE recognizes that a 791 PURCHASING COOPERATIVE Member may, in agreement with Vendor, make modifications to the 791 PURCHASING COOPERATIVE Retail Power Contract to reflect specific needs of the 791 PURCHASING COOPERATIVE Member. This modified form will still be referred to as the 791 PURCHASING COOPERATIVE Retail Power Contract. The Parties agree that for an agreement to be considered a 791 Purchasing Cooperative Retail Power Contract, it must specifically include a reference to 791 Purchasing Cooperative. 791 Purchasing Cooperative acknowledges that Vendor is not obligated to enter into a 791 Purchasing Cooperative Retail Power Contract with any 791 Purchasing Cooperative Member.

Vendor may only use the 791 PURCHASING COOPERATIVE Retail Power Contract with 791 PURCHASING COOPERATIVE Members who have agreed to purchase electricity from Vendor through the 791 PURCHASING COOPERATIVE preferred retail supplier program. If a 791 PURCHASING COOPERATIVE member solicits proposals for electric service from Vendor directly and has specifically provided notice that they will not be using 791 PURCHASING COOPERATIVE as their contract vehicle through the 791 PURCHASING COOPERATIVE preferred retail supplier program, Vendor cannot use the 791 PURCHASING COOPERATIVE Retail Power Contract to serve the 791 PURCHASING COOPERATIVE member. For the avoidance of doubt, if a vendor and a 791 PURCHASING COOPERATIVE Member, execute a 791 PURCHASING COOPERATIVE Retail Power Contract, vendor will be obligated to pay 791 PURCHASING COOPERATIVE the participation fee.

To further clarify, vendor may sell to a 791 PURCHASING COOPERATIVE member or potential 791 PURCHASING COOPERATIVE member, which is any governmental or other public entity in Texas through the 791 PURCHASING COOPERATIVE preferred retail supplier program. If a potential customer is not currently a 791 PURCHASING COOPERATIVE member, they may join 791 PURCHASING COOPERATIVE by contacting 791 PURCHASING COOPERATIVE at [admin@791COOP.org](mailto:admin@791COOP.org). Awarded vendors are not restricted from soliciting any entity or responding to any entity that issued a Request for Proposals and has chosen not to use the 791 PURCHASING COOPERATIVE interlocal cooperative method of procurement.

If you identify a Texas public or governmental entity that wants to purchase power and use a cooperative or interlocal contract, and is not a current 791 PURCHASING COOPERATIVE Member, please have them call the number provided above or email the address above so 791 PURCHASING COOPERATIVE may contact the entity to provide all applicable information; provided, however, the Parties acknowledge that Vendor is not required to do so.

791 PURCHASING COOPERATIVE will provide awarded vendors membership packets for this purpose upon request.

**ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE MEMBER AND VENDOR THAT REQUIRES THE 791 PURCHASING COOPERATIVE MEMBER TO INDEMNIFY ANY OTHER PARTY, EXCEPT TO THE EXTENT PERMITTED BY THE APPLICABLE CONSTITUTION, LAWS OR REGULATIONS OF THE JURISDICTION OF THE LOCATION OF THE 791 PURCHASING COOPERATIVE MEMBER OR THE LOCATION OF THE PERFORMANCE OF THE CONTRACT UNDER THIS AGREEMENT, IS NOT PERMITTED UNDER THIS AGREEMENT TO THE EXTENT PROHIBITED BY APPLICABLE CONSTITUTION, LAWS OR REGULATIONS AND RENDERS THE INDEMNITY REQUIREMENT NULL AND VOID AS IT APPLIES TO THE 791 PURCHASING COOPERATIVE MEMBER'S RESPONSIBILITY TO INDEMNIFY ANY PARTY.**

#### **Disclosures**

1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with 791 PURCHASING COOPERATIVE under a 791 PURCHASING COOPERATIVE Agreement if Vendor feels that such possible conflicts of interest exist. If you believe there is a conflict of interest as described in the form CIQ instruction sheet contained in this RFP, please complete and submit the form CIQ provided as instructed.
3. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

### **Renewal of Agreements**

The Agreement with 791 PURCHASING COOPERATIVE is for a five (5) year term with one (1), five (5) year extension option. Any extension of the initial term will be agreed to in writing between 791 PURCHASING COOPERATIVE and Vendor. Nothing herein shall require either party to agree to an extension of the initial term.

### **Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with 791 PURCHASING COOPERATIVE Members Resulting from the Solicitation and with the Vendor Named in this Agreement.**

NO AGREEMENT FOR GOODS OR SERVICES WITH A 791 PURCHASING COOPERATIVE MEMBER BY THE AWARDED VENDOR NAMED IN THIS AGREEMENT THAT RESULTS FROM THE SOLICITATION AWARD NAMED IN THIS AGREEMENT, MAY INCORPORATE AN AUTOMATIC RENEWAL CLAUSE WITH WHICH THE 791 PURCHASING COOPERATIVE MEMBER MUST COMPLY. ALL RENEWAL TERMS INCORPORATED IN AN AGREEMENT BY THE VENDOR WITH THE 791 PURCHASING COOPERATIVE MEMBER SHALL ONLY BE VALID AND ENFORCEABLE WHEN THE VENDOR RECEIVES WRITTEN CONFIRMATION BY PURCHASE ORDER OR EXECUTED AGREEMENT ISSUED BY THE 791 PURCHASING COOPERATIVE MEMBER FOR ANY RENEWAL PERIOD. THE PURPOSE OF THIS CLAUSE IS TO AVOID A 791 PURCHASING COOPERATIVE MEMBER INADVERTENTLY RENEWING AN AGREEMENT DURING A PERIOD IN WHICH THE GOVERNING BODY OF THE 791 PURCHASING COOPERATIVE MEMBER HAS NOT PROPERLY APPROPRIATED AND BUDGETED THE FUNDS TO SATISFY THE AGREEMENT RENEWAL. THIS TERM IS NOT NEGOTIABLE AND ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE MEMBER AND A 791 PURCHASING COOPERATIVE AWARDED VENDOR WITH AN AUTOMATIC RENEWAL CLAUSE THAT CONFLICTS WITH THESE TERMS IS RENDERED VOID AND UNENFORCEABLE AS TO THE AUTOMATIC RENEWAL CLAUSE.

### **Invoices**

Vendor is responsible for the invoicing and collection of all funds due from a 791 PURCHASING COOPERATIVE Member to Vendor.

### **Member Payments**

791 PURCHASING COOPERATIVE Members will make payments directly to the Vendor for all funds owed as provided for in the 791 PURCHASING COOPERATIVE Retail Power Contract.

### **Pricing**

The price Vendor will charge a 791 PURCHASING COOPERATIVE Member will be defined in the 791 PURCHASING COOPERATIVE Retail Power Contract and determined at the time Vendor and a 791 PURCHASING COOPERATIVE Member enters into a 791 PURCHASING COOPERATIVE Retail Power Contract. The price Vendor charges a 791 PURCHASING COOPERATIVE Member will include the 791 PURCHASING COOPERATIVE annual participation fee.

At no time during the initial term or extension term of this Agreement will Vendor offer a fixed price to a 791 PURCHASING COOPERATIVE Member that exceeds \$0.250/kWh (Not-To-Exceed Price); provided, however, the Not To Exceed Price does not include TDSP charges, taxes or other charges that are passed through under the terms of the 791 Cooperative Retail Power Contract and does not apply

to any quantities for which an index based price is used in the computation or settlement of the contract price. Examples of index based prices include, without limitation, real time prices, day ahead prices and heat rate prices. At no time shall the Retail Fee charged to a 791 PURCHASING COOPERATIVE Member exceed \$ \$0.005//kWh (Not-To-Exceed Retail Fee). The term Retail Fee, as used herein, contains no commodity related cost components, but instead represents Vendor's fee for acting as the retail electric provider and for Vendor's operational costs (customer service, billing, etc.), credit costs, working capital costs, SG&A costs, and profit. 791 Purchasing Cooperative acknowledges that the Retail Fee may not be set forth separately in the 791 Purchasing Cooperative Retail Power Contract.

Language similar to the following will be added to the Representations Section of the Vendor's 791 PURCHASING COOPERATIVE Retail Power Contract:

“Seller represents that this Agreement, pursuant to the award to (insert vendor's name) as a result of the 791 PURCHASING COOPERATIVE RFP 170603 Retail Electric Power, complies with the applicable terms and conditions contained in a separate agreement between Seller and 791 PURCHASING COOPERATIVE.”

### **791 PURCHASING COOPERATIVE Member Purchasing Procedures**

A 791 PURCHASING COOPERATIVE Member electing to purchase electricity from Vendor pursuant to this Agreement, will execute Vendor's 791 PURCHASING COOPERATIVE Retail Power Contract.

- Vendor delivers goods/services directly to the participating Member.
- Vendor invoices the participating 791 PURCHASING COOPERATIVE Member directly.
- Vendor receives payment directly from the participating Member.
- Vendor is required to reports all sales with 791 PURCHASING COOPERATIVE Member to 791 PURCHASING COOPERATIVE within ten (10) business days of executing a 791 PURCHASING COOPERATIVE Retail Power Contract with a 791 PURCHASING COOPERATIVE Member pursuant to the Sales Reporting Procedures section of this Agreement.

### **Participation Fees**

Vendor agrees to pay 791 PURCHASING COOPERATIVE a participation fee for all Agreement sales to 791 PURCHASING COOPERATIVE Members utilizing an awarded 791 PURCHASING COOPERATIVE Retail Power Contract. Vendor will pay 791 Purchasing Cooperative the total dollars derived from multiplying a \$/kWh participation fee, as defined below, and the 791 PURCHASING COOPERATIVE Members actual monthly kWhs of electricity consumed under the 791 PURCHASING COOPERATIVE Retail Power Contract as set forth on Vendor's invoice. The participation fee will be included in the energy price stipulated in the 791 PURCHASING COOPERATIVE Retail Power Contract between Vendor and a 791 PURCHASING COOPERATIVE Member.

**The 791 PURCHASING COOPERATIVE participation fee will not be a provided as a separate line item to the 791 PURCHASING COOPERATIVE Member.** Vendor will remit the participation fee to 791 PURCHASING COOPERATIVE within thirty (30) business days of receipt of the payment for power, which includes the participation fee, from the 791 PURCHASING COOPERATIVE Member. Failure to pay the participation fee will result in termination of this Agreement and 791

PURCHASING COOPERATIVE reserves the right to take any action under the law or equity for any breach of contract.

The 791 PURCHASING COOPERATIVE participation fee will be calculated as follows:

<b>Participation Fee (\$/MWh)</b>	<b>Annual historical Usage (MWhs)</b>
\$0.50	1 – 20,000
\$0.25	20,001 – 40,000
\$0.05	40,001 and above

Prior to delivering an offer to a 791 PURCHASING COOPERATIVE Member for electric service, the awarded vendor(s) will calculate a single, weighted \$/MWh fee for 791 PURCHASING COOPERATIVE to be included in the electricity contract price using the above the tiered pricing matrix. The weighted fee will be based on the customer’s historical actual usage for the previous twelve months adjusted for any known changes to future consumption that have been provided in writing by the 791 Purchasing Cooperative Member to Vendor. Once calculated, the fee will be added to the vendor’s electricity price that is presented to the 791 PURCHASING COOPERATIVE Member. The 791 PURCHASING COOPERATIVE fee will not be separately listed in vendor’s proposal to the 791 PURCHASING COOPERATIVE Member.

The single, weighted 791 PURCHASING COOPERATIVE fee that is included in the vendor’s retail electricity price will remain the same throughout the term of the transaction term awarded to Vendor, and will not be subject to a true-up or adjustment based on actual usage.

For the avoidance of doubt, below is sample calculation of a single weighted fee using a hypothetical customer.

Customer annual historical usage:		45,000 MWh
Tier 1 fee:	\$10,000	(\$0.5 * 20,000 MWh)
Tier 2 fee:	\$5,000	(\$0.25 * 20,000 MWh)
Tier 3 fee:	\$250	(\$0.05 * 5,000)
Weighted Fee:	\$0.34/MWh	(\$15,250/45,000 MWh)

**Sales Reporting Procedures for Vendor**

Vendor will report any execution of a transaction agreement for a sale of electricity made to a 791 PURCHASING COOPERATIVE Member that entered into a 791 PURCHASING COOPERATIVE Retail Power Contract with Vendor within ten (10) business days of the 791 PURCHASING COOPERATIVE Member executing a 791 PURCHASING COOPERATIVE Retail Power Contract. Vendor shall:

- Complete the Transaction Confirmation provided as Attachment A to this Agreement when reporting sales to 791 PURCHASING COOPERATIVE and,
- Provide 791 PURCHASING COOPERATIVE a copy of the executed 791 PURCHASING COOPERATIVE Retail Power Contract
- At the end of each year, provide 791 PURCHASING COOPERATIVE with the actual kWh consumed by each 791 PURCHASING COOPERATIVE Member purchasing electricity from Vendor
- Provide a reconciliation of all 791 PURCHASING COOPERATIVE participation fees paid to 791 PURCHASING COOPERATIVE during the previous year

### **Indemnity**

Vendor agrees to indemnify and hold harmless and defend 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees and agents, from and against all third party claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance of this Agreement or Vendor's performance under 791 PURCHASING COOPERATIVE Retail Power Contracts with 791 PURCHASING COOPERATIVE Members under this agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, invitees, unless such claims are based in whole upon the negligent acts or omissions of the 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees, or agents, a 791 Purchasing Cooperative Member or its officers, employees or agents. If based in part upon the negligent acts or omissions of the 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees, or agents, a 791 Purchasing Cooperative Member or its officers, employees or agents, Vendor shall be responsible for their proportional share of the claim. 791 Purchasing Cooperative members and Region 15 ESC (inclusive of its officers, employees and agents, including 791 Purchasing Cooperative, mutually indemnify Vendor to the extent allowed under Texas law or the statutes in the state where the 791 Cooperative member operate.

### **State of Texas Franchise Tax**

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

### **Miscellaneous**

Nothing in the Agreement or in any other communication between 791 PURCHASING COOPERATIVE and the Vendor may be construed as a guarantee that 791 PURCHASING COOPERATIVE Members will purchase electricity from Vendor at any time. Neither Party to this Agreement shall have the authority to bind the other or make any representations on behalf of the other Party. Nothing in this Agreement shall be construed as creating an agency or employment relationship between Vendor and 791 Purchasing Cooperative. 791 Purchasing Cooperative acknowledges that it is an independent contractor. Nothing in this Agreement may be read or construed to entitle any person or entity other than the Parties hereto to assert any claim, course of action or right of any kind under this Agreement. This Agreement may not be amended, modified or supplemented except in a writing signed by both Parties.

## **Termination**

Contract shall terminate at the end of the agreement or at the end of any contract extensions. Either party may terminate for breach of contract which would include bankruptcy, or due to continued failure to perform the terms in this agreement. Prior to exercising termination for breach, the non-breaching party must provide notice by certified mail to provide the other party 30 days to solve the stated problems.

However, if this agreement is terminated prior to the end date of the initial term or the end date of an agreed to extension term, any 791 PURCHASING COOPERATIVE Retail Power Contract entered into between Vendor and a 791 PURCHASING COOPERATIVE Member shall survive and will not be terminated. Upon termination of this agreement between 791 PURCHASING COOPERATIVE and the Vendor, this agreement shall survive only insofar as to govern all surviving 791 PURCHASING COOPERATIVE Retail Power Contracts between the Vendor and 791 PURCHASING COOPERATIVE Member's. Termination for convenience is required under 2 CFR part 200.

## **Licenses**

Awarded vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the Agreement. 791 PURCHASING COOPERATIVE reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated.

## **Marketing**

Awarded vendor agrees to allow 791 PURCHASING COOPERATIVE to use their name and logo within the 791 PURCHASING COOPERATIVE website, marketing materials and advertisement, in each with Vendor's prior written consent. Vendor may use the 791 PURCHASING COOPERATIVE name and logo in marketing the 791 PURCHASING COOPERATIVE Retail Power Contract to 791 PURCHASING COOPERATIVE Members or other Texas government or public entities.

## **Legal obligations**

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this RFP and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

## **Audit rights**

Awarded Vendor shall, at their sole expense, maintain appropriate copies of all purchases made by any 791 PURCHASING COOPERATIVE Member that utilizes this Agreement. 791 PURCHASING COOPERATIVE and Region 15 ESC each reserve the right to audit the accounting for a period of two (2) years from the time such purchases are made to verify that the payments made to 791 Purchasing Cooperative under this Agreement are accurate. This audit right shall survive



termination of this Agreement for a period of two (2) years from the effective date of termination. 791 PURCHASING COOPERATIVE shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, copies of the requested materials that are reasonably requested to verify the payments due under this Agreement shall be provided in the format and at the location reasonably designated by Region 15 ESC or 791 PURCHASING COOPERATIVE. 791 PURCHASING COOPERATIVE shall bear the cost of such audit requested by 791 PURCHASING COOPERATIVE, but all documents maintained by the vendor shall be produced and made available to 791 PURCHASING COOPERATIVE or its agents at no cost.

### **Force Majeure**

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and cause of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice,

so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

### **Incorporation of Solicitation**

The 791 PURCHASING COOPERATIVE Solicitation, Request for Proposals, Request for Qualifications or the Request for Competitive Sealed Proposals solicitation and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

### **Remedies**

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the Vendor or ESC Region 15/791 PURCHASING COOPERATIVE to a binding arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may], be subject to mediation at the request of either party. Any issues not resolved hereunder must be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Tom Green County, Texas unless mutually agreed upon for a different location. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by ESC Region 15, signed by the Parties subject to approval by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

### **Choice of Law**

This agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

### **Jurisdiction and Service of Process**

Any Proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Tom Green County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world.

### **Contract Governance**

Any contract made or entered into by the ESC Region 15/791 PURCHASING COOPERATIVE is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, ESC Region 15/791 PURCHASING COOPERATIVE does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

### **Supplemental Agreements**

The 791 PURCHASING COOPERATIVE Member entity participating in the 791 PURCHASING COOPERATIVE Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. 791 PURCHASING COOPERATIVE, its agents, 791 PURCHASING COOPERATIVE Members and employees shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a vendor submitting a Proposal requires 791 PURCHASING COOPERATIVE and/or 791 PURCHASING COOPERATIVE Member to sign an additional agreement, those agreements shall not violate any terms in this Agreement. Supplemental Vendor's Agreement documents may not become part of 791 PURCHASING COOPERATIVE's Agreement with vendor unless and until an authorized representative of 791 PURCHASING COOPERATIVE reviews and approves it. 791 PURCHASING COOPERATIVE permits 791 PURCHASING COOPERATIVE Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's 791 PURCHASING COOPERATIVE Retail Power Contract.

### **Survival Clause**

All applicable agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and 791 PURCHASING COOPERATIVE or the 791 PURCHASING COOPERATIVE Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by 791 PURCHASING COOPERATIVE or a 791 PURCHASING COOPERATIVE Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties thereto or as otherwise specified herein relating to termination of this agreement.

### **Smoking**

Persons working under Agreement shall adhere to the 791 PURCHASING COOPERATIVE Member's or local smoking statutes, codes or policies.

### **Novation**

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement and assigns this Agreement to such successor, a successor in interest must agree to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

### **Licenses**

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. 791 PURCHASING COOPERATIVE its members reserve the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

### **791 PURCHASING COOPERATIVE Member Purchasing Procedures**

Purchase orders or their equal will be agreed to by participating 791 PURCHASING COOPERATIVE Member and the awarded vendor and should indicate on the order that the purchase is per the applicable 791 PURCHASING COOPERATIVE Agreement number. Orders are typically emailed to 791 PURCHASING COOPERATIVE at [admin@791COOP.org](mailto:admin@791COOP.org)

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating 791 PURCHASING COOPERATIVE Member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to 791 PURCHASING COOPERATIVE (unless prior arrangements have been made with 791 PURCHASING COOPERATIVE for an alternative submission schedule).

**Non-Exclusivity:** This Agreement is non-exclusive, and Vendor retains the right to market energy-related products and services, including any transaction renewals, to customers, in its own name or with third parties.

**Confidentiality:** Except as required by law, each Party shall keep strictly confidential and not disclose to any third party any non-public information obtained from the other Party related to the subject matter of this Agreement; provided, however, that the Parties shall have the right to disclose Confidential Information, including the information in a Transaction Confirmation set forth in Attachment A, to a 791 Cooperative Member a referenced in a Transaction Confirmation. The obligations set forth in this paragraph, shall continue for the term of this Agreement and for a period of three (3) years thereafter. Any breach of any of the obligations set forth in this paragraph shall be deemed material and the Parties agree that monetary damages will be inadequate. In addition to all other remedies that it may be entitled to as a matter of law the non-breaching Party, shall be entitled to specific performance and any other form of equitable relief to enforce the provisions of this Agreement without proving damages or posting bond.

**Attorneys' Fees.** In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing Party.

**Form W-9.** 791 Purchasing Cooperative shall provide Vendor with a duly executed Form W-9 (and, as applicable, a duly executed California Form 587 and/or a duly executed California Form 590) within fifteen days of executing this Agreement. Notwithstanding anything to the contrary set forth herein, Vendor shall have no obligation to pay 791 Purchasing Cooperative until Vendor receives such Form W-9.

**Representative's Licensure.** 791 Purchasing Cooperative represents and warrants that it is, and shall remain at all relevant times, properly licensed in every jurisdiction where it is required by law to be so licensed.

## ATTACHMENT A

### SAMPLE TRANSACTION CONFIRMATION RELATING TO A 791 PURCHASING COOPERATIVE MEMBER

This Transaction Confirmation is incorporated into the Vendor Agreement dated July 7, 2020 to confirm the purchase and sale of electricity between **INSERT VENDOR NAME** and a 791 PURCHASING COOPERATIVE Member.

#### 791 PURCHASING COOPERATIVE Retail Power Contract Attributes

791 PURCHASING COOPERATIVE Member Purchasing Electricity:

Start Date of 791 PURCHASING COOPERATIVE Member's Retail Power Contract:

End Date of 791 PURCHASING COOPERATIVE Member's Retail Power Contract:

Contract Price (\$/kWh):

791 PURCHASING COOPERATIVE Participation Fee (\$/kWh):

Expected 791 PURCHASING COOPERATIVE Member's Annual kWh:

Expected 791 PURCHASING COOPERATIVE Participation Fee (\$):

#### 791 PURCHASING COOPERATIVE Member Contact Information

Name:

Phone Number:

Email Address:

Mailing Address:

The Transaction Confirmation and the 791 PURCHASING COOPERATIVE Retail Power Contract shall be transmitted to 791 PURCHASING COOPERATIVE within Ten (10) business days of execution.

Transmit or provide the above required documents to:

[admin@791.org](mailto:admin@791.org) or mail to

Attention:

791 PURCHASING COOPERATIVE (791 COOP)

P. O. Box 592867

San Antonio, TX, 78259

ATTACHMENT B  
FORM OF 791 PURCHASING COOPERATIVE RETAIL POWER  
CONTRACT

**791 PURCHASING COOPERATIVE Vendor  
Agreement Signature Form**

**RFP # 791-2020-03-001 Retail Electric Power**

**Vendor:**

Company Name Reliant Energy Retail Services, LLC

Address 910 Louisiana Street

City Houston State TX Zip 77002

Phone 713.537.3000 Fax N/A

Email of Authorized Representative JJBailey@reliant.com

Name of Authorized Representative Robert J. Gaudette

Title Vice President

Signature of Authorized Representative 

Date 07-07-2020

**791 PURCHASING COOPERATIVE:**

791 PURCHASING COOPERATIVE Authorized Representative

Name Jeffrey Shokrian

Signature: 

Title President 791 Cooperative

Date July 7, 2020