



Southern California Edison
 Rosemead, California (U 338-E)

Cancelling Revised Cal. PUC Sheet No. 58990-E
 Revised Cal. PUC Sheet No. 58605-E

Sheet 1

DEMAND RESPONSE PROVIDER (DRP)
 SERVICE AGREEMENT

Form 14-942

(Continued)

(To be inserted by utility)
 Advice 3394-E-A
 Decision _____

Issued by
R.O. Nichols
Senior Vice President

(To be inserted by Cal. PUC)
 Date Filed Apr 21, 2016
 Effective Apr 15, 2016
 Resolution _____

DEMAND RESPONSE PROVIDER (DRP) SERVICE AGREEMENT

This Demand Response Provider (“DRP”) Service Agreement (“Agreement”) is made and entered into as of this ____ day of ____, by and between “_____” (“DRP”), a _____ organized and existing under the laws of the state of _____, and the Utility, Southern California Edison (SCE), wherein SCE is a corporation organized and existing under the laws of the state of California. From time to time, DRP and SCE shall be individually referred to herein as a “Party” and collectively as the “Parties.”

Section 1: General Description of Agreement

- 1.1 This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference, and the Parties are also bound by the requirements of Rule 24, which this Agreement is intended, in part, to effectuate. This Agreement and Rule 24 shall govern the business relationship between the Parties hereto by which DRP shall offer Demand Response Provider Demand Response Service (DRP DR Service) in the California Independent System Operator’s (CAISO’s) wholesale electricity markets through transactions with retail customers in SCE’s service territory. Each Party, by agreeing to undertake specific activities and responsibilities for or on behalf of customers, acknowledges that each Party shall relieve and discharge the other Party of the responsibility for said activities and responsibilities with respect to those customers, consistent with Rule 24, Section C. Except where explicitly defined herein, the definitions controlling this Agreement are contained in SCE’s Rule 1, Definitions, and/or Rule 24, Direct Participation Demand Response.
- 1.2 The form of this Agreement has been developed as part of the California Public Utility Commission’s (CPUC’s or Commission’s) regulatory process, was intended to conform to CPUC directives, was filed with and approved by the CPUC for use between a SCE and a DRP participating in the wholesale market with SCE’s bundled service customers, and may not be waived, altered, amended or modified, except as provided a) herein or in Rule 24 or b) as may otherwise be authorized by the CPUC. Each party shall be responsible for keeping up-to-date on Commission-authorized changes.

Section 2: Representations

- 2.1 Each Party agrees to remain in compliance with the terms of this Agreement, Rule 24, as amended from time to time upon CPUC approval, and other applicable Commission rules and requirements regarding use of SCE’s bundled load to provide demand response in the wholesale electric market.
- 2.2 Each person executing this Agreement for the respective Parties expressly represents and warrants he or she has authority to bind the entity on whose behalf this Agreement is executed.
- 2.3 Each Party represents that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes such Party’s legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 2.4 Each Party shall (a) exercise all reasonable care, diligence, and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.
- 2.5 As more than one DRP may be involved with providing DR Services for a single customer into the wholesale market, the DRP represents that, in so far as it is partnering with another DRP to provide these services, the division of total responsibilities as contained in Rule 24 and its associated contracts has been parsed out between the parties such that all responsibilities have been met through one or more commercial agreements.

Section 3: Term of Service

The term of this Agreement shall commence on the last date of execution by both Parties hereto (the "Effective Date") and shall terminate on the earlier of (a) the date the DRP informs the SCE it is no longer operating as a DRP for SCE's customers; (b) upon termination pursuant to Section 5 hereof; (c) the effective date of a new DRP Service Agreement between the Parties hereto, or (d) upon relevant modification of Rule 24 that materially affects this Agreement. Notwithstanding the Effective Date of this Agreement, the DRP acknowledges it may only offer Demand Response Service to customers effective on or after the CPUC-approved date for commencement of such services by DRPs, and only after it has fulfilled the provisions of Rule 24, Section E.1 and E.3 (CPUC requirements for DRPs enrolling Bundled Service customers).

Section 4: Billing, Metering, Payment, Other Duties

- 4.1 Metering services that are available to the DRP shall be as described in SCE's Rule 24, Section F.
- 4.2 SCE will bill and the DRP agrees to pay for all services and products provided by SCE, and approved by the CPUC, related to direct participation demand response services in accordance with the terms and conditions set forth in Rule 24 and any fee schedule to be adopted in cost recovery application, hereinafter Schedule CC-DSF and Schedule DRP-SF. Any services provided by the DRP to SCE shall be by separate agreement between the Parties and are not a subject of this Agreement. (T)
- 4.3 SCE, to the extent it is acting as the Meter Data Management Agent (MDMA), agrees to provide meter data to the DRP, in accordance with Sections D and F of Rule 24. MDMA services, requested by the DRP or its customers, may be provided by SCE subject to a separate agreement or an otherwise applicable tariff.
- 4.4 DRP may request access from SCE to customer-specific electric energy usage data subject to obtaining customer authorization and consistent with Commission precedents and orders governing customer data access, as described in SCE's Rule 24, Section D. Customer data may also be obtained through Data Pulse Equipment installed by SCE provided the DRP has obtained customer consent for such utilization and provided that acquisition of data and such utilization does not interfere with SCE's metering equipment. DRP will be responsible for installation costs. Upon mutual agreement of the parties, customers may authorize DRP access to data using electronic means. As soon as reasonably practical, electronic authorization of third-party data access should supersede paper forms.
- 4.5 To the extent a customer indicates on the Form CISR-DRP that it authorizes its DRP to notify SCE of the customer's disenrollment from Demand Response Service pursuant to the relevant checkbox on the Form CISR-DRP, the DRP must effectuate the customer's wishes by notifying SCE immediately so that SCE can terminate transmission of the specified data to the DRP. The DRP releases, holds harmless and indemnifies SCE from any liability, claims, demands, causes of action, damages or expenses resulting from any failure to timely notify SCE of the customer's disenrollment. In the event that the customers, not the DRP on the customer's behalf, revoke access to customer meter data, the SCE shall provide the DRP with immediate notice of the revocation.
- 4.6 In accordance with Rule 24, Section H, the DRP must establish a security deposit limited to twice the estimated maximum monthly bill for SCE charges under this Agreement. (T)
(T)

Section 5: Events of Default and Remedy for Default

- 5.1 An Event of Default under this Agreement shall occur if either Party breaches a material term of this Agreement or SCE's Rule 24 and does not cure such breach within thirty (30) calendar days of receipt of written notice from the non-defaulting Party, or within such time as may be provided by this Agreement or Rule 24.
- 5.2 In the Event of Default, the non-defaulting Party shall be entitled (a) to exercise any and all remedies available under SCE's Rule 24; (b) to the extent not inconsistent with SCE's Rule 24, to exercise any and all remedies provided for by law or in equity; and (c) to terminate this Agreement upon written notice to the other Party which shall be effective upon the receipt thereof.
- 5.3 Breach by any Party hereto of any provision of Rule 24 shall be governed by applicable provisions therein and each Party will retain all rights granted thereunder.

Section 6: Nondisclosure

- 6.1 Neither Party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party, any trade secrets, and other information of a similar nature, whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Without limiting the foregoing, Confidential Information shall also include customer-specific information transmitted by SCE to the DRP regarding location of customer service accounts on the CAISO grid (Sub-Lap and pNode), service voltage, meter numbers and types, the identity of customers' MDMA, Meter Service Provider and Load Serving Entity, and any Unique Customer Identifier(s) assigned by SCE and entered into CAISO's Demand Response System by a DRP. Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to this Agreement or from a party who was under an obligation of confidentiality to the other Party to this Agreement, or information developed by either Party independent of any Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. These obligations with respect to treatment of Confidential Information shall survive this Agreement pursuant to Section 22.8 below. Customers' interval usage data, disclosed by SCE subject to customer authorization via Form CISR-DRP, shall not be considered Confidential Information as defined in this Agreement. However, the DRP is subject to Rule 25 as a Covered Entity to the extent that the DRP receives interval usage data for more than ten customers.
- 6.2 Notwithstanding the foregoing, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

Section 7: Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the total amount paid or payable to SCE under this Agreement, Schedule CC-DSF or Schedule DRP-SF during the six-month period immediately preceding the event giving rise to the claim(s). In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

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Section 8: Indemnification

- 8.1 To the fullest extent permitted by law, and subject to the limitations set forth in Section 7 of this Agreement, each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, and its current and future direct and indirect parent companies, affiliates, subsidiaries and their shareholders, officers, directors, employees, contractors agents, servants, successors and assigns (collectively, the "Indemnified Party") from and against any and all third-party claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including reasonable expenses, legal and otherwise, which shall include reasonable attorneys' fees ("Claims"), to the extent arising from negligent or willful act or omission by the Indemnifying Party in the performance of this Agreement, except to the extent arising from any negligent or willful act or omission of the Indemnified Party. This Section 8 represents the Indemnifying Parties' entire obligation and the Indemnified Party's exclusive remedy regarding any third party claims.
- 8.2 If any claim covered by Section 8.1 is brought against the Indemnified Party, then the Indemnifying Party shall be entitled to assume the defense of such claim. If a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.
- 8.3 The Indemnifying Party's obligation to indemnify under this Section 8 shall survive termination or assignment (from the period of time prior to the assignment) of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any statutory scheme, including, without limitation, under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

Section 9: Assignment and Delegation

- 9.1 Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this Section 9 shall be void ab initio.
- 9.2 Notwithstanding the provisions of this Section 9, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, shall serve as the point of contact between its subcontractor and the other Party, and shall provide the other Party at least thirty (30) calendar days' prior written notice of any such subcontracting, which notice shall include such information about the subcontractor as the other Party shall reasonably require, and

provided further that each Party may subcontract its obligation to provide Metering or Meter Reading Services under this Agreement only to subcontractors who have complied with all certification or registration requirements described in applicable law, CPUC rules and SCE's Rule 24. If either Party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner which is in conformity with that Party's obligations under this Agreement.

Section 10: Independent Contractors

Each Party shall perform its obligations under this Agreement (including any obligations performed by a Party's designees as permitted under Section 9 of this Agreement) as an independent contractor.

Section 11: Entire Agreement

This Agreement consists of, in its entirety, this Demand Response Provider Service Agreement and all attachments hereto, and all Demand Response Service Requests submitted pursuant to this Agreement and SCE's Rule 24. This Agreement supersedes all other service agreements or understandings, written or oral, between the Parties related to the subject matter hereof with the exception of Rule 24, the terms of which are incorporated herein, Schedule CC-DSF and Schedule DRP-SF, which shall be read in conjunction with this Agreement.

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Section 12: Enforceability

If any provision of this Agreement or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

Section 13: Notices

13.1 Except as otherwise provided in this Agreement, any notices under this Agreement shall be in writing and shall be effective upon delivery if delivered by (a) hand; (b) email; (c) U.S. Mail, first class postage pre-paid, or (d) facsimile, with confirmation of receipt to the Parties as follows:

If the notice is to the DRP:
Company Name Contact Name:
Business Address:
E-mail address:
Facsimile:

If the notice is to the LSE:
Contact Name:
Business Address:
E-mail address
Facsimile:

13.2 Each Party shall be entitled to specify as its proper address any other address in the United States upon written notice to the other Party.

13.3 Each Party shall designate in Attachment A the person(s) to be contacted with respect to specific operational matters relating to Demand Response Service. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party.

Section 14 Time of Essence

The Parties expressly agree that time is of the essence for all portions of this Agreement.

Section 15 Dispute Resolution

- 15.1 Should SCE and DRP have an unresolved dispute under this Agreement, the dispute shall initially be referred to a Vice President of SCE, or his/her designee, and an officer of DRP, or designee, for resolution. Should the dispute remain unresolved after good faith informal dispute resolution, the Parties shall proceed under the Dispute Resolution outlined in Section I of SCE's Rule 24.
- 15.2 If the dispute involves a request for damages, Parties are notified that the Commission has no authority to award damages. To resolve such issues, the Parties may mutually agree to pursue mediation or arbitration to resolve such issues, or, if no agreement is reached, to pursue other legal remedies that may be available to the Parties with the understanding that nothing in this section vitiates the effect of Sections 7 and 8 supra.

Section 16: Applicable Law and Venue

This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of California, and shall exclude any choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance. Except for matters and disputes with respect to which the CPUC is the initial proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in Los Angeles County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

Section 17: Force Majeure

Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any event of force majeure or other cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes ("Force Majeure Event"), which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. It is agreed that upon receipt of notice from the affected Party about such Force Majeure Event to the other Party within a reasonable time after the cause relied on, then the obligations of the Party, so far as they are affected by the event of force majeure, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied with all reasonable dispatch. Both Parties shall take all reasonable steps to comply with this Agreement and SCE's Rule 24 despite occurrence of a Force Majeure Event.

Section 18: Not a Joint Venture

Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

Section 19: Conflicts Between this Agreement and SCE's Rule 24

Should a conflict exist or develop between the provisions of this Agreement and SCE's Rule 24, Rule 24 shall prevail.

Section 20: Amendments or Modifications

- 20.1 Except as provided in Section 1.2, no amendments or modifications shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties to the extent they are consistent with Commission approval, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade. Substantive changes to the terms of this Agreement shall be first approved by the Commission.
- 20.2 This Agreement may be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement to conform to changes directed or necessitated by the CPUC. In the event the Parties are unable to agree on the required changes or modifications to this Agreement, their dispute shall be resolved in accordance with the provisions of Section 15 hereof or, in the alternative, DRP may elect to terminate this Agreement upon written notice to SCE, which shall be effective upon the receipt thereof. SCE retains the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application for a change in SCE's rates, charges, classification, service, or rules, or any agreement relating thereto.

Section 21: Audits

- 21.1 When the DRP reasonably believes that errors related to billing and metering activity may have occurred and SCE is the MDMA for the customer(s), the DRP may request the production of such documents as may be required to verify the accuracy of such billing and metering, provided that requisite customer consent has been obtained by the DRP. Such documents shall be provided within ten (10) business days of such request. In the event the requesting Party, upon review of such documents, discovers actual errors related to metering activity, the requesting Party may direct that an audit be conducted. SCE and the DRP shall designate their own employee representative or their contracted representative to audit the other party's records subject to confidentiality requirements.
- 21.2 Any such audit shall be undertaken by SCE, the DRP, or their contracted representative at reasonable times without interference with the audited Party's business operations, and in compliance with the audited Party's security procedures. SCE and the DRP agree to cooperate fully with any such audit.
- 21.3 Specific records to support the accuracy of meter data provided in the settlement process may require examination of metering support documentation maintained by subcontractors. Each of SCE and the DRP shall include a similar clause in their agreements with their subcontractors reserving the right to designate their own employee representative, or their contracted representative to audit records related to the settlement process for Demand Response Service.

- 21.4 The auditing Party will notify the audited Party in writing of any exception taken as a result of an audit. The audited Party shall refund the amount of any undisputed exception to the auditing Party within thirty (30) days. If the audited Party fails to make such payment, the audited Party agrees to pay interest, accruing monthly, at a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California. Interest will be computed from the date of written notification of exceptions to the date the audited Party reimburses the auditing Party for any exception. The cost of such audit shall be paid by the auditing Party; provided, however, that in the event an audit verifies overcharges of five percent (5%) or more, then the audited Party shall reimburse the auditing Party for the cost of the audit.
- 21.5 This right to audit shall extend for a period of three (3) years following the date of final payment under this Agreement. Each party and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

Section 22: Miscellaneous

- 22.1 Unless otherwise stated in this Agreement: (a) any reference in this Agreement to a section, subsection, attachment or similar term refers to the provisions of this Agreement; (b) a reference to a section includes that section and all its subsections; and (c) the words "include," "includes," and "including" when used in this Agreement shall be deemed in each case to be followed by the words "without limitation." The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.
- 22.2 The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. The provisions of this Agreement shall not impart rights enforceable by any person, firm, or organization other than a Party or a successor or assignee of a Party to this Agreement.
- 22.3 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.
- 22.4 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing signed by the waiving Party.
- 22.5 Each Party shall be responsible for paying its own attorneys' fees and other costs associated with this Agreement, except as provided in Sections 7 and 8 hereof.
- 22.6 To the extent that the CPUC has a right under then-current law to audit either Party's compliance with this Agreement or other legal or regulatory requirements pertaining to Demand Response Service that Party shall cooperate with such audits. Nothing in this Section shall be construed as an admission by either Party with respect to the right of the CPUC to conduct such audits or the scope thereof.

- 22.7 Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to indemnification, payment, settlement, and confidentiality, shall so survive.
- 22.8 Except as otherwise provided in this Agreement, all rights of termination, cancellation or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy in this Agreement.

The Parties have executed this Agreement on the dates indicated below, to be effective upon the later date.

SIGNATURE CLAUSE

The signatories hereto represent that they have been appropriately authorized to enter into this Contract on behalf of the party for whom they sign.

DEMAND RESPONSE PROVIDER:

NAME OF AUTHORIZED INDIVIDUAL: _____

SIGNATURE: _____

TITLE: _____

MAILING ADDRESS: _____

TELEPHONE: _____

SOUTHERN CALIFORNIA EDISON COMPANY

NAME OF AUTHORIZED INDIVIDUAL: _____

SIGNATURE: _____

TITLE: _____

DATE EXECUTED: _____

(L)

(L)

ATTACHMENT A
Metering and Meter Reading Services

(L)

A. Contact Persons (Section 13.3):

(N)

Metering and Meter Reading Services

LSE Contact: _____

Email Address: _____

DRP Contact: _____

Email Address: _____

MDMA Contact: _____

Email Address: _____

B. Parties' Representatives (Section 15.1):

LSE Representative: _____

Contact Name: _____

Business Address: _____

Phone Number: _____

Email Address: _____

DRP Representative: _____

Contact Name: _____

Business Address: _____

Phone Number: _____

Email Address: _____

(N)