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PREPARED DIRECT TESTIMONY OF

MATT RICHARDSON

ON BEHALF OF

SAN DIEGO GAS & ELECTRIC COMPANY

PUBLIC VERSION

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



JUNE 2, 2025

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**PREPARED DIRECT TESTIMONY OF
MATT RICHARDSON
ON BEHALF OF SAN DIEGO GAS & ELECTRIC COMPANY**

I. INTRODUCTION

The purpose of my testimony is to describe the expenses for procurement-related activities that are recorded in San Diego Gas & Electric Company's ("SDG&E") Energy Resource Recovery Account ("ERRA"), Portfolio Allocation Balancing Account ("PABA"), Transition Cost Balancing Account ("TCBA"), Local Generation Balancing Account ("LGBA"), Modified Cost Allocation Mechanism ("MCAM"), and Tree Mortality Non-Bypassable Charge Balancing Account ("TMNBCBA") for the record period of January 1, 2024 through December 31, 2024. My testimony will explain SDG&E's contract administration activities during the record period associated with SDG&E's Power Purchase Agreements ("PPA"). Some of the testimony below, and information provided in the attached exhibits and Attachment 1, are confidential and privileged pursuant to applicable provisions of California Public Utilities Commission ("Commission") Decision ("D.") 06-06-066, General Order ("G.O.") 66-D and California Public Utilities Code ("Pub. Util. Code") Section ("§") 583 and § 454.5(g). Confidential provisions are identified by yellow highlights and redacted for public filings.

SDG&E respectfully requests the Commission's approval of SDG&E's contract administration and power procurement-related expenses for 2024, which are identified, explained and supported in this testimony.

II. DESCRIPTION OF EXPENSES

The expenses recorded in ERRA, PABA, TCBA, LGBA, MCAM, and TMNBCBA for the record period are summarized in Attachments A, B, C, D, E, and M respectively of the accompanying prepared direct testimony of SDG&E witness Brenda Hua. These expenses are recorded in compliance with D.02-12-074.

1 As described in Section III of Brenda Hua’s prepared direct testimony, the purpose of the
2 PABA is to record the “above-market” costs and revenues associated with all generation resources
3 that are eligible for cost recovery through the PCIA rates, including SDG&E’s Utility-Owned
4 Generation (“UOG”).

5 Also, described in Section IV of Brenda Hua’s prepared direct testimony, the purpose of the
6 TCBA is to accrue all Competitive Transition Charge (“CTC”) eligible revenues and recover all
7 Qualifying Facility (“QF”) generation-costs above a calculated market benchmark. The TCBA was
8 authorized by D.02-12-074 and D.02-11-022.

9 Also, described in Brenda Hua’s prepared direct testimony, the purpose of the LGBA is to
10 record the revenues and costs of generating contracts where the Commission has determined that
11 the resource is subject to a cost allocation mechanism. In the record period, the projects included in
12 SDG&E’s LGBA were the contracts for Carlsbad Energy Center, LLC (“CECL”), Escondido
13 Energy Center (“EEC”), Pio Pico Energy Center (“PPEC”), CP Kelco CHP, Grossmont Hospital
14 CHP, Sentinel (RA Only), Gateway (RA Only), Edwards Sanborn (RA Only), and the utility-owned
15 El Cajon Energy Storage (“ES”), Escondido ES, Fallbrook BESS, Westside Canal ES, Melrose
16 BESS 1 & 2, Pala Gomez Creak BESS, Boulevard ES, Clairemont ES, Elliott ES, Paradise ES and
17 Miramar Top Gun ES facilities. The LGBA activity is described in more detail in Brenda Hua’s
18 prepared direct testimony. The LGBA was authorized by D.13-03-029 and established in Advice
19 Letter (“AL”) 2499-E, approved on August 9, 2013 and effective on July 31, 2013.

20 Also, described in Section VI of Brenda Hua’s prepared direct testimony, the purpose of the
21 MCAMBA to record costs for those load-serving entities (“LSEs”) that opted out of self-
22 procurement, and backstop procurement-related costs required by D.19-011-016 and/or D.21-006-
23 035. The MCAMBA was established in D.19-11-016, D.21-06-025, and D.22-05-015, and was
24 approved per AL 4043-E, effective January 12, 2023.

1 **A. CTC Contract Costs**

2 In accordance with D.02-12-074, this category captured expenses recorded in ERRA up to
3 the market benchmark value of the QF and transition Combined Heat & Power (“CHP”) PPAs that
4 are non-LGBA. In D.11-12-018, the responsibility of calculating the benchmark changed from the
5 Energy Division to SDG&E. SDG&E calculated a benchmark of \$183.96/MWh in 2024. The
6 expenses for QFs were calculated by multiplying the purchased MWh by the effective market
7 benchmark. This category also includes indirect Greenhouse Gas (“GHG”) costs associated with
8 the PPAs. Any expenses above the benchmark were recorded in the TCBA pursuant to Assembly
9 Bill (“AB”) 1890. The 2024 activity in SDG&E’s TCBA is described in more detail in Attachment
10 B of Brenda Hua’s prepared direct testimony.

11 **B. Contract Costs (non-CTC)**

12 This category captured the expenses for renewable PPAs, SDG&E tolling agreements and
13 other bilateral PPAs. The costs include capacity, energy, fuel, fuel transportation costs, and indirect
14 GHG cost associated with the PPAs. Also included in this category are revenues and expenses for
15 real-time bilateral purchases and sales, contract-related California Independent System Operator
16 (“CAISO”) revenue or payment adjustments and revenues for contract damages or awards, broker
17 fees, and other miscellaneous service fees.

18 **C. Generation Fuel & In-Lieu Payments**

19 All monthly recorded fuel and transportation expenses for SDG&E’s utility-owned
20 generation, and fuel purchased for SDG&E’s tolling agreements, were recorded in PABA and
21 LGBA. In-Lieu Payments (of franchise fees) were collected for Palomar fuel costs and recorded in
22 ERRA.

D. Other CAISO Related Costs

Included in this category are revenues and charges associated with transmission losses, and ancillary services. This also includes SDG&E's share of imbalance energy charges and Grid Management Charges ("GMC").

E. CAISO Supply & Load Costs

This category captures the CAISO payments and charges to SDG&E as the Scheduling Coordinator ("SC") for its supply resources, including Inter-SC trades ("ISTs"), Day-Ahead and Real-Time Market activities, and their imbalance energy charges and revenues. This category also includes the CAISO payments and charges to SDG&E as the SC for load, GMC, Day-Ahead and Real-Time Market load activities, and load imbalance energy.

F. Hedging Costs & Financial Transactions

This expense category captures the monthly expenses for hedging generation fuel and commissions and other bank fees.

G. Western Renewable Energy Generation Information System ("WREGIS") Costs

This category reflects costs relating to participation in the Renewable Energy Credit ("REC") management program administered by WREGIS.

H. Congestion Revenue Rights ("CRR") CAISO Costs

This category includes costs and revenues relating to CRR activity charged to SDG&E by the CAISO.

I. CAISO Convergence Bidding Costs

This category includes revenues and costs related to convergence bidding as authorized in D.10-12-034.

1 **J. GHG & Carrying Costs**

2 This category includes costs and cost adjustments related to SDG&E’s procurement of GHG
3 compliance instruments to comply with California Air Resources Board’s Cap-and-Trade program
4 pursuant to AB 32. The 2024 GHG compliance activity is described in more detail in the prepared
5 direct testimony of SDG&E witness Stephen Elliott.

6 **III. ELECTRIC & FUEL PROCUREMENT FUNCTIONS**

7 The Electric & Fuel Procurement Department (“E&FP”) is responsible for managing
8 SDG&E’s electric generating portfolios, procuring new resources, managing Renewable Portfolio
9 Standard (“RPS”) compliance, energy and gas contract administration and settlements. This section
10 generally describes the responsibilities of the major functions provided by various sections of
11 E&FP. Also, attached in Exhibit A is an organizational chart of the E&FP department as of the end
12 of the record period.

13 **A. Long-Term Procurement Functions**

14 Origination, Energy Supply and Dispatch (“OES&D”) is comprised of two functional areas:
15 Origination (Origination Analytics & Energy Origination) and Energy Supply & Dispatch
16 (“ES&D”). Origination Analytics supports long-term procurement of energy products such as
17 renewables, conventional generation, ES, demand response, energy efficiency, resource adequacy
18 (“RA”) capacity and RECs. To this end, the group designs, implements and manages competitive
19 solicitations in accordance with Commission directives and executes agreements on a bilateral basis
20 to meet energy procurement needs. Furthermore, the group supports Origination with financial and
21 technical modeling for utilization in PUC proceedings or regulatory approval of SDG&E contracts.
22 Energy Origination negotiates and executes PPA and resource requirements for UOG, to meet
23 SDG&E’s long-term energy and capacity requirements and regularly updates the Procurement
24 Review Group. ES&D is described below in the Trading & Scheduling Functions.

B. Resource Planning Section

The Resource Planning (“RP”) Section provides support for several regulatory agencies and filings including the ERRA proceeding. They forecast procurement costs for the ERRA, TCBA, LGBA, MCAM, TMNBCBA, and the Power Charge Indifference Adjustment (“PCIA”). SDG&E’s witness Brenda Hua uses these forecasts to develop ERRA revenue requirements for each element. The forecasts include expected generation and purchases from SDG&E’s resource portfolio including tolling projects, UOG, renewable projects, QFs and market purchases. RP also forecasts the CAISO charges, hedging costs, San Onofre Generating Station Unit 1 Offsite Spent Fuel Storage Costs and a forecast of total GHG costs. RP provides support for the development of the GHG allowance revenue return allocation and the volumetric revenue return for small business and residential customers, as well as rates for the Green Tariff Shared Renewables (“GTSR”) program.

C. Trading & Scheduling Functions

ES&D provides trading and scheduling functions in support of UOG, tolling agreements, renewable energy, QFs, demand-side resources and other resources as required. They manage the portfolio of assets consistent with the Commission-approved procurement plans and gas supply plans for UOG. ES&D manages the least-cost dispatch of the UOG and tolling agreements, battery ES, purchases and sales of GHG related products, natural gas and power, and hedges to maintain the portfolio’s price risk exposure within the Customer Risk Tolerance limits. They perform all scheduling and interface functions with the CAISO and participate in CAISO-related meetings and working groups. ES&D manages compliance with annual and monthly RA requirements and oversees the real-time scheduling, dispatch, and trading functions. ES&D staffs a real-time desk to manage real-time energy transactions and scheduling activities and ensures that ES&D complies with various regulatory and financial constraints/requirements. Details of the least-cost dispatch are provided in the prepared direct testimony of SDG&E witness Rolyn Abugan.

D. Back-Office Functions

Settlements and Systems (“S&S”) provides back-office support for UOG, renewable energy, QFs and other resources as required. S&S manages PPAs through construction and development phases, up to the commercial operation date (“COD”), monitors and administers energy supply (e.g., PPAs for QFs, renewable energy resources and tolling agreements) and gas marketing contracts delivering energy and capacity to SDG&E and participates in various regulatory proceedings relating to contract administration. S&S also verifies, validates, and processes invoices and billing requests for bilateral transactions, and prepares journal entries to record expenses and revenues. In terms of interaction with CAISO, S&S validates and processes settlement statements and invoices from the CAISO, disputes any questionable charges, and reports generation and load meter data. They also coordinate Sarbanes-Oxley (“SOX”) 404 compliance and control activities for many E&FP functions.

The Systems Section is responsible for system administration for departmental software supported by SDG&E's Information Technology department. The primary applications are a) Power Costs Inc. (“PCI”) dispatch program, repository, and payment database, b) Versify Solutions, a MCG Energy Company (“V Performance”) for RA requirements and c) the Meter Data Processing System (“MDPS”), which performs the meter reporting and submissions to the CAISO.

E. Mid-Office Functions

SDG&E’s Energy Risk Management (“ERM”) department, which reports to SDG&E’s Vice President - Risk Management & Chief Compliance Officer, provides mid-office support functions to E&FP by identifying, managing, monitoring and reporting on market, credit, financial and operational risks. The ERM department conducts daily reviews of electric procurement physical and financial positions, including Commission-approved risk metrics, trader authority limits, counterparty credit risk positions and compliance with financial liquidity/collateral limits. ERM

also supports the Front Office in the development of hedging plans and monitors compliance with the approved plans.

ERM monitors and enforces process controls related to the execution, recording and valuation of trades, including derivatives. ERM is also responsible for compliance with Dodd-Frank requirements, including trade reporting and record retention activities, and for SOX 404 compliance and testing for many of the controls related to ERM activities.

IV. SUPPLY PORTFOLIO ADMINISTRATION IN GENERAL

S&S is responsible for: (a) contract administration, (b) preparing, reviewing and issuing invoices, (c) issuing payments associated with energy transactions and generation fuel agreements, and (d) providing mandated regulatory and financial reporting.

As of the end of the record period, S&S administered an electric supply portfolio consisting of UOG and bilateral PPAs with conventional and renewable power plants. The UOG portion of the portfolio was comprised of SDG&E's 100% ownership of the following operational plants:

SDG&E Power Plants	MW ¹
Miramar Energy Facility 1 & 2	96
Cuyamaca Energy Center	45
Palomar Energy Center	588.21
Desert Star Energy Center	495
Ramona Solar	4.3
El Cajon Energy Battery Storage	7.5
Escondido Energy Battery Storage	30
Top Gun Storage	30
Kearny Battery Energy Storage	20
Fallbrook Battery Energy Storage	40
Westside Canal Battery Energy Storage	131
Melrose BESS 1	10
Melrose BESS 2	10
Boulevard Energy Storage	10
Clairemont Energy Storage	9
Elliott Energy Storage	10
Paradise Energy Storage	10

¹ The fossil fueled UOG MWs are consistent with SDG&E's Resource Data Template ("RDT") reported to the CAISO as updated when necessary from time-to-time. However, the small SDG&E-owned Vista Fuel Cell and Rooftop Solar (combined) MWs are not reported to the CAISO.

Pala Gomez Creek BESS	10
Air Attack Base	.5
Rooftop Solar (combined)	3.4

SDG&E's PPAs include the following:

Status as of:

December 31, 2024

Commercial Operations				Pre-Operational				Expired/Terminated			
TOTAL PPA'S				TOTAL PPA'S				TOTAL PPA'S			
Contract Summary	Number	MW	MWH	Contract Summary	Number	MW	MWH	Contract Summary	Number	MW	MWH
QF/CHP	4	35.0	14,457	QF/CHP	1	17.4	0	QF/CHP	2	80.0	3,246.5
Renewable	39	2,412.3	6,244,501	Renewable	2	163.5	0	Renewable	3	109.3	228,917.1
Tolling	5	1,054.4	315,398	Tolling	0	0.0	0	Tolling	1	40.0	864.4
Energy Storage	6	381.0	119,674	Energy Storage	2	173.5	0	Energy Storage	0	0.0	0.0
WSPP/EEI	13	24.0	(3,577,074)	WSPP/EEI	0	0.0	0	WSPP/EEI	10	0.0	(1,249,383.0)
Total	67	3,926.7	3,116,956	Total	5	354.4	0	Total	16	229.3	(1,016,355)

Commercial Operations				Pre-Operational				Expired/Terminated			
TOTAL PPA'S				TOTAL PPA'S				TOTAL PPA'S			
Technology Type	Number	MW	MWH	Technology Type	Number	MW	MWH	Technology Type	Number	MW	MWH
Bio-Mass	1	24.0	197,901.3	Bio-Mass	0	0.0	0	Bio-Mass	0	0.0	0.0
Conduit-Hydro	4	2.9	5,108.0	Conduit-Hydro	0	0.0	0	Conduit-Hydro	0	0.0	0.0
Energy Storage - Pumped Hydro	0	0.0	0.0	Energy Storage - Pumped Hydro	0	0.0	0	Energy Storage - Pumped Hydro	1	40.0	864.4
Energy Storage - Battery	6	381.0	119,673.7	Energy Storage - Battery	1	60.0	0	Energy Storage - Battery	0	0.0	0.0
Hybrid - Energy Storage + Solar PV	1	10.0	39,786.4	Hybrid - Energy Storage + Solar PV	4	294.4	0	Hybrid - Energy Storage + Solar PV	0	0.0	0.0
Landfill Gas	3	7.5	60,735.9	Landfill Gas	0	0.0	0	Landfill Gas	1	2.3	3,894.4
Market	13	24.0	(3,577,074.0)	Market	0	0.0	0	Market	10	0.0	(1,249,383.0)
Natural Gas	7	1,108.4	329,814.0	Natural Gas	0	0.0	0	Natural Gas	2	80.0	3,246.5
Solar PV	23	1,346.1	3,287,689.7	Solar PV	0	0.0	0	Solar PV	0	0.0	0.0
Wind	9	1,022.8	2,653,321.4	Wind	0	0.0	0	Wind	2	107.0	225,022.8
Total	67	3,926.7	3,116,956	Total	5	354.4	0	Total	16	229.3	(1,016,355)

S&S performs the following routine tasks to ensure compliance with contract terms and regulatory requirements.

A. Contract Management for New Projects

Before new projects reach COD, S&S provides contract management during a project's construction phase ensuring that all conditions precedent and milestones are met. Additionally, S&S manages the transition between construction and commercial operation including multiple meetings with the new counterparty to introduce staff, review the scheduling communication protocols, and discuss the invoicing and settlement procedures. The purpose of these meetings is to ensure a smooth transition from the construction phase to commercial operation.

B. Invoice Verification

For most non-QF contracts, the Sellers issue monthly invoices to SDG&E. For QFs, SDG&E issues monthly invoices to the Seller. Based on contract terms, and the daily communication records, the S&S staff prepares, reviews and verifies the details of the invoices, including, but not limited to: prices and quantity of energy delivered or scheduled, verification of

1 excused outages, prices of capacity, TOD factors, index prices, startup payments, economic
2 curtailment compensation, and validity of any adjustments to the invoices. S&S staff follow the
3 complete payment process to verify it is done in a timely manner per the contract.

4 S&S staff is also responsible for coordinating, investigating and resolving disputes, if
5 necessary, in a timely manner and in accordance with terms and conditions of the contract and
6 applicable utility and CAISO tariffs.

7 **C. WREGIS Administration**

8 Starting in 2007, as part of the RPS compliance effort, the California Energy Commission
9 (“CEC”), the Western Governors’ Association and Western Electricity Coordinating Council jointly
10 launched the implementation of WREGIS, an online system which tracks renewable energy
11 generation from units that register in the system using verifiable data and creates RECs for this
12 generation. In 2008, SDG&E became an account holder and qualified reporting entity within
13 WREGIS and worked with the renewable counterparties to register each facility into the system.
14 SDG&E started reporting renewable generation from these facilities through WREGIS starting on
15 May 1, 2008. During the record period, the WREGIS software platform, MRETS, resolved an
16 issue that was discovered in 2023, resulting in an incorrect number of RECs being issued for several
17 generators, including a large portion of generators contracted with SDG&E. The solution for an
18 over-issuance of RECs from 2023 was to under-issue the same quantity of RECs for those same
19 generators in 2024. S&S staff reviewed and verified the REC discrepancies as a result of this
20 software defect from 2023 tied out to the discrepancies in 2024.

21 **D. Active Monitoring**

22 Most of the PPAs require Contract Administrators to monitor and track generation to ensure
23 the generator’s compliance with the contract terms through the life of the contracts. It includes, but
24 is not limited to, generation, insurance, credit requirements and status, and compliance with

1 regulatory and reporting requirements. Contract Administrators work closely with the generators to
2 immediately address any contractual issues that may arise.

3 Particularly for the renewable contracts, D.10-06-004 mandated SDG&E to actively monitor
4 the Seller's compliance with Standard Terms and Conditions 6 ("STC 6"), as defined in the Pub.
5 Util. Code.² SDG&E implements the following method of active monitoring:

- 6 i. Request the Seller's copy of CEC's certification, both pre-& final;
- 7 ii. Request that the Seller register the contracted facility with WREGIS and provide
8 SDG&E their WREGIS ID; and
- 9 iii. Request that the Seller certify that the product SDG&E received during the record
10 period was indeed in compliance with STC 6.

11 For the record period, all RPS projects reported compliance with the STC 6 based on above
12 activities (i) and (ii). All Sellers responded to SDG&E's questionnaire at year end according to (iii)
13 above, confirming their compliance.

14 **E. Contract System Administration**

15 During the record period, E&FP's front, mid and back offices used Allegro as its primary
16 contract management trading and tracking system through June of 2024, then transitioned to PCI
17 from July 2024 going forward. Allegro & PCI are SOX compliance systems that are used for
18 regulatory reporting, accounting, commodity trading management, and portfolio valuation. They
19 create an audit trail when changes are made to contracts in the system. During the record period,
20 S&S supported SDG&E's goals of complying with SOX requirements, maintaining up-to-date

² STC 6 requires the Sellers to warrant throughout the term of the PPA that: (i) the Project qualifies and is certified by the CEC [California Energy Commission] as an Eligible Renewable Energy Resource ("ERR") as such term is defined in the Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in the law. *See* D.10-06-004 at 4-5 (citation omitted).

1 systems, enhancing forecast accuracy, and ensuring compatibility between software systems used
2 within E&FP.

3 **F. Summary of SDG&E's Long-Term Energy Contract Portfolio**

4 During the record period, S&S managed the contract terms and activities of conventional
5 and renewable contracts in its long-term energy contract portfolio. The Electric Contracts tab in
6 Attachment 1 of this testimony lists and summarizes the contract terms and activities during the
7 record period in the following categories:

Contract Class
Contract Name
Contract Terms
Payment Terms
New Contracts
Modifications, Letter Agreements & Amendments filed in AL's or Applications
Modifications, Letter Agreements & Amendments for Review in ERRA Application
Terminated Contracts

8
9 **G. Non-QF Contract Types**

10 There are generally two Non-QF contract types and two subtypes in SDG&E's portfolio that
11 include, among other benefits, the purchase or sale of as-available capacity and energy, RECs and
12 RA benefits. Below is a list defining those contracts:

13 **1. Standard Contracts**

14 Contracts that originate from a Request for Offer ("RFO"), or tariff, or regulatory mandate.
15 The Buyer and Seller agree to standard terms which are non-modifiable. Standard PPAs typically
16 include the purchase of energy and/or capacity and may be as-available or dispatchable. Standard
17 contracts can be Renewable or Tolling. Some examples of these contracts in our portfolio include
18 RAM, ReMAT and PURPA.

2. Bilateral Contracts

Contracts that originate from a Request for Offer (“RFO”) and are not tariff or regulatory mandated. The Buyer and Seller negotiate the terms and are bound by the provisions. Bilateral Contracts typically include the purchase of energy and/or capacity and may be firm or dispatchable. Bilateral Contracts can be Renewable or Tolling.

3. Tolling Contracts (Standard or Bilateral)

These are dispatchable contracts that originate from an RFO, and SDG&E purchases and transports fuel (i.e. natural gas or electricity) to the power plants. SDG&E pays for capacity based on the availability of the plants and the contracts include fixed and variable O&M charges, startup costs, etc. SDG&E economically bids the plants and available ancillary services into the CAISO market.

4. Renewable Contracts (Standard or Bilateral)

Power purchase and sale contracts with power suppliers whose generation fuel (wind, solar, etc.) are certified as renewable.

H. QF/CHP Contract Administration

As of the end of the record period, the following table lists and summarize the names, sizes, energy and capacity prices and quantities of all exporting and non-exporting QF/CHP’s during the record period:

QF & CHP PLANTS THAT SOLD POWER OR WERE DISPATCHED BY SDG&E					
Plant	PPA Type	Nameplate MW	Fixed Capacity MW	Energy Price	Capacity Price
SF Peak Hydro	SOI	0.4	0	SRAC	SRAC
CP Kelco	CHP	256.7	0	SRAC	SRAC
Goal Line	CHP	49.9	49.9	\$6.21/MWh variable O&M	\$172/KW-yr. + \$23.40-\$33.00/kW-yr.
Grossmont	CHP	4.1	0	SRAC	SRAC
YCA	CHP	55.0	55.0	\$3.54/MWh variable O&M	\$140/kW-yr. with 17.65% bonus adj.
Total		134.4	104.9		

The following table lists the percentages of generation (MWh) supplied by QF projects, but not CHP, relative to SDG&E's total energy supply for the record period.

Total QF Supply (MWh)	SDG&E's Total Energy Supply (retail sales MWh)	% of QF generation relative to SDG&E's total energy supply
164.22	3,207,235	0.005%

The following table lists the percentages of QF renewable energy (MWh), but not CHP, relative to total QF supply for the record period.

QF RPS Eligible Renewable Purchased Energy (MWh)	Total QF Purchases (MWh)	% of QF RPS eligible renewable Purchased Energy relative to total QF Purchases
164.22	189	100%

The following table lists the percentages of QF renewable energy (MWh) relative to total RPS supply.

QF Renewable Purchases (MWh)	Total RPS Purchases (MWh)	% of QF RPS eligible Renewable Energy relative to total RPS supply
164.22	3,283,935	0.005%

1. Payments to QF/CHP

During the record period, there were no unusual or significant payments to, or claims by, the QFs. The table below shows the QF monthly delivered energy MWh and the energy and capacity payments made to QFs during the record period. The table is also provided in Attachment 1.

2024 QF MONTHLY PAYMENTS			Confidential/privileged pursuant to applicable provisions of D.06-06-066, G.O. 66-D and PUC Code Section 583 and Section 454.5(g).												
Monthly Energy Purchases (MWh)			NOTE: DOES NOT INCLUDE GENERATION FROM, OR PAYMENT TO, CONVERTED CHP PLANTS												
QFID	Technology	Generating Facility	Jan Total MWh	Feb Total MWh	Mar Total MWh	Apr Total MWh	May Total MWh	Jun Total MWh	Jul Total MWh	Aug Total MWh	Sept Total MWh	Oct Total MWh	Nov Total MWh	Dec Total MWh	Total MWh
119	Conduit Hydro	San Francisco Peak Hydro Plant													164.22
Monthly Energy Purchases			Jan Energy \$	Feb Energy \$	Mar Energy \$	Apr Energy \$	May Energy \$	Jun Energy \$	Jul Energy \$	Aug Energy \$	Sept Energy \$	Oct Energy \$	Nov Energy \$	Dec Energy \$	Total Energy \$
119	Conduit Hydro	San Francisco Peak Hydro Plant													\$ 6,987.92
Monthly Capacity Purchases			Jan Capacity	Feb Capacity	Mar Capacity	Apr Capacity	May Capacity	Jun Capacity	Jul Capacity \$	Aug Capacity	Sept Capacity	Oct Capacity	Nov Capacity	Dec Capacity	Total Capacity \$
119	Conduit Hydro	San Francisco Peak Hydro Plant													\$ 1,305.82

1 **2. Efficiency Monitoring**

2 SDG&E did not review any QF cogeneration efficiency records for the record year.

3 **3. Insurance Monitoring**

4 During the record period, the S&S staff solicited and tracked insurance certificates for all
5 PPAs to ensure current certificates are maintained by Ebixcerts.com, an Ebix Inc. system.

6 **V. EXPIRED AND TERMINATED CONTRACTS**

7 SDG&E normally administers each contract from execution through the end of the contract
8 term, at which point the contract will expire. However, SDG&E can terminate a PPA earlier than
9 the expiration date due to a counterparty event of default. If this occurs, SDG&E will notify the
10 counterparty of the default. If the counterparty fails to cure the default, SDG&E may terminate the
11 contract. Contracts can also be terminated by mutual consent between the counterparties. The
12 expired and terminated contracts are discussed in the relevant sections below and in Attachment 1.

13 **A. Contract Amendments, Modifications and Letter Agreements**

14 During the record period, SDG&E signed a letter agreement with one counterparty and
15 amended one contract. Attachment 1 of this testimony summarizes the amendment and letter
16 agreement.

17 **B. Contract Administration of Fuel Procurement Contracts**

18 During the record period, SDG&E had fuel procurement contracts in effect or under
19 negotiation, initiation, revision, amendment, or termination. Attachment 1 of this testimony
20 includes a tab entitled “Gas Contracts” that identifies the counterparties, contract types and effective
21 dates of all active fuel procurement contracts in effect or otherwise acted upon during the record
22 period.

C. Hypothetical Maximum Disallowance for Standard of Conduct 4 Violations

For the record period, SDG&E calculated \$18.754 million³ as the hypothetical Maximum Disallowance for Standard of Conduct 4 Violations which equates to twice the estimated administrative expenses of \$9.377 million calculated in the table below. In D.02-12-074, the Commission set “each utility’s maximum disallowance risk equal to two times their annual administrative expenses for all procurement functions, including those related to DWR contract administration, utility-retained generation, renewables, QFs, demand-side resources, and any other procurement resources.”⁴ This hypothetical disallowance cap was established in Ordering Paragraph 25 of D.02-12-074 and modified by Ordering Paragraph 3.a. of D.03-06-067.

The record period falls under the 2024 GRC period which is effective from 2024 through 2027. In the table below, SDG&E provides a hypothetical disallowance cap utilizing the GRC Authorized Revenues for Procurement Expenses and shows how those costs are hypothetically distributed in four major functions: Origination & Portfolio Design, Energy Supply & Dispatch, Back Office and Resource Planning. More information about the test-year (“TY”) 2024’s O&M costs for non-shared services are summarized in the SDG&E Direct Testimony of Christopher A. Summers (Electric and Fuel Procurement) (May 2022) in the 2024 GRC proceeding (Application (“A.”) 22-05-016) and attached Exhibit C is a copy of this testimony.⁵

³ SDG&E provides this information on a hypothetical basis. SDG&E sees no practical usefulness of this number in this proceeding.

⁴ D.02-12-074 at 55.

⁵ SDG&E uses USA (Federal Energy Regulatory Commission (“FERC”)) Accounts 556 (System Control and Load Dispatch) and 557 (Other Expense – Purchase Power). There are no USA numbers that can be used for the procurement functions in the table. It is SDG&E’s understanding that the USA systems of accounts relates to FERC accounts only.

**SDG&E Hypothetical Desallowance Cap Utiliting the GRC Authorized Revenues for
Procurement Expenses**

\$ In Millions

#	Description	SDGE's Authorized Revenue Requirement for Procurement Expenses (2024\$)	Maximum Disallowance
1	Origination & Portfolio Design	\$ 2,479.00	
2	Energy Supply & Dispatch	\$ 2,159.00	
3	Back Office	\$ 3,536.00	
4	Resource Planning	\$ 1,203.00	
Total		\$ 9,377.00	\$18,754.00

1

VI. CONTRACT PORTFOLIO AND STATUS

This section lists each of the executed contracts in SDG&E's portfolio by technology type and provides a brief description of the contract or project status. SDG&E also describes any issues that occurred in the record period.

During the record period, SDG&E conducted resource-specific and Preferred-Resources RFOs requesting solicitations with the following pro-forma agreements:

PROCUREMENT- RELATED RESOURCES SOLICITATION IN 2024

Pro-Forma Agreement Type	Date Issued	Description
2024 Q2 Excess RA Electronic Solicitation	1/5/2024	Sought to sell excess RA capacity products (Jul-Sep): CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex, Import Allocation Rights.
2024 Q3 Excess RA Electronic Solicitation	3/18/2024	Sought to sell excess RA capacity products (Jul-Sep): CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex, Import Allocation Rights.
2024 Q4 Excess RA Electronic Solicitation	6/10/2024	Sought to sell excess RA capacity products (Oct-Dec): CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex.
2025 RA Solicitation	8/26/2024	Sought to sell RA capacity products (Local and System) with load serving entities, marketers and generators. It is the intention of this solicitation to minimize the procurement cost impact for ratepayers while also meeting SDG&E's RA Requirement.
Phase 3 Integrated Resource Planning Reliability RFO 2025-2031	3/6/2024	SDG&E sought through the Phase 3 Integrated Resource Planning Reliability RFO to procure resources to meet electric system reliability needs as required by CPUC D.21-06-035, D.23-040 and D.24-02-047.
2024 Independent Evaluator Request for Proposals	6/28/2024	SDG&E issued this Request for Proposals (RFP) to solicit qualified parties to form SDG&E's pool of Independent Evaluators (IE) for 2025-2027.
2024 RPS Unbundled REC Sales Request for Proposals	8/23/2024	As authorized by D.23-12-008, San Diego Gas & Electric Company (SDG&E) is issuing this Request for Proposal (RFP) to seek offers from third parties interested in purchasing 2022 and 2023 Portfolio Content Category 3, or PCC 3, REC product from eligible renewable resources under contract with SDG&E.

SDG&E's 2024 CAISO
Cluster 15 Request for
Information for the Allocation
of Commercial Interest Points

10/1/2024

San Diego Gas & Electric Company (SDG&E) issues this Request for Information (RFI) seeking information from third parties (Respondents) with projects in the California Independent System Operator (CAISO)'s Cluster 15 interconnection queue seeking the opportunity to be awarded a Commercial Interest Point Allocation (CIPA) from SDG&E, in alignment with CAISO's Interconnection Process Enhancements.

Copies of the pro forma PPAs are attached in a PDF format in Exhibit B of this testimony.

In addition to the pro forma PPAs listed above, SDG&E had a Bioenergy Market Adjusting Tariff ("Bio-Mat") and Public Utility Regulatory Policies Act ("PURPA") for projects 20 MW or less available during the record period.

A. Renewable Resources (Non QF/CHP)

SDG&E's PPA renewable portfolio is comprised of resources from competitive solicitations, bilateral PPAs, and standard-offer PPAs. This section provides a description of each renewable energy resource project in SDG&E's electric portfolio that delivered energy to SDG&E during the record period, arranged by technology type, along with discussions of activities unique to each project. Additional details about each project can be found in the Electric Contracts tab of Attachment 1 of this testimony.

1. BIO-GAS & BIO-MASS

- HL Power Company, LP: This five-year Bio-RAM PPA was executed on November 14, 2016, started delivering energy under the PPA in 2017, and amended pursuant to Resolution E-4977 to modify the project's fuel requirements and extending the term for an additional five years. The PPA was amended for a 2nd time pursuant to Resolution E-5288 and extended the term through January 2032. The PPA price is \$109.00/MWh, adjusted by time-of-delivery ("TOD") factors. The bio-mass project size is 30 MW project and SDG&E's contract is for 24 MW,

is in Wendel, California (“CA”), and is connected to the Lassen Municipal Utility which delivers their energy to the PG&E system.

- San Marcos Energy, LLC: This twenty-year Customer Renewable Energy “CRE” FIT PPA with SDG&E was executed on November 20, 2009. The plant started delivering energy under the PPA in 2011. The PPA has term at price of \$117.30/MWh adjusted by TOD factors. The landfill gas plant size is 1.5 MW and is in San Marcos, CA.
- Sycamore Energy I, LLC: This twenty-year CRE FIT PPA was executed on November 20, 2009. The plant started delivering energy under the PPA in 2011. The PPA has a price of \$117.30/MWh adjusted by TOD factors. The landfill gas plant size is 1.5 MW and is in Santee, CA.
- MM San Diego (“Miramar”): This two-year PURPA PPA was executed on March 18th, 2024 and started delivering energy under the PPA on March 21st, 2024. The Energy price is a product of the Day Ahead Market Price and the unit generation. The Capacity Price is As-Available per the CPUC. The landfill gas project size is 4.5 MW and is in San Diego, CA.

2. HYDRO

- Bear Valley Hydro Plant: This evergreen restated bilateral PPA was executed on April 13, 1994. The conduit hydro facility started delivering power in 1994. The PPA price is Short Run Avoided Costs (“SRAC”) with as-available capacity payments. The conduit hydro plant size is 1.5 MW and is in Escondido, CA.
- Olivenhain Municipal Water District: This twenty-year Wastewater FIT PPA with the Public Water and Wastewater was executed on July 23, 2013 and started delivering energy under the PPA in 2013. The PPA price is \$93.75/MWh adjusted by TOD factors. The conduit hydro project size is 0.45 MW and is in Encinitas, CA.

3. SOLAR

- Arlington Valley Solar: This twenty-five-year bilateral PPA was executed on June 3, 2011 and started delivering energy under the PPA in 2013.

1 The PPA price is \$107.50/MWh adjusted by TOD factors. The PPA price
2 changed from \$107.50/MWh to \$110/MWh because the unit had reached
3 its full deliverability Capacity Status in May 2022 as shown in the
4 CAISO NQC listing. SDG&E exercised its curtailment rights during the
5 record period. The solar PV project size is 127 MW and is in Arlington,
6 Arizona (“AZ”).

7 ○ Calipatria Solar: This twenty-year RAM PPA was executed on
8 December 13, 2012 and started delivering energy under the PPA in 2016.
9 The PPA price started at \$64.55/MWh in year 1, escalating to
10 \$85.65/MWh throughout the term adjusted by TOD factors. SDG&E
11 exercised its curtailment rights during the record period. The solar PV
12 project size is 19.99 MW and is in Imperial Valley, CA. SDG&E
13 exercised its RA purchased options for the record year. This resulted in
14 an additional \$3 per MW on the contract price.

15 ○ Campo Verde Solar: This twenty-year bilateral PPA was executed on
16 October 31, 2006 and started delivering energy under the PPA in 2013.
17 The PPA price started at \$112.52/MWh in year 1 and escalates to
18 \$135.94/MWh throughout the term adjusted by TOD factors. SDG&E
19 exercised its curtailment rights during the record period. The solar PV
20 project size is 139 MW and is in Imperial Valley, CA.

21 ○ Cascade Solar: This twenty-year RAM PPA was executed on October
22 19, 2012. The plant started delivering energy under the PPA in 2013.
23 The PPA price started at \$64.81/MWh in year 1 and escalates to
24 \$103.61/MWh throughout the term, adjusted by TOD factors. The solar
25 PV project size is 18.5 MW and is in Sun Fair, CA.

26 ○ Catalina Solar: This twenty-five-year bilateral PPA was executed on
27 June 3, 2011 and started delivering energy under the PPA in 2013. The
28 PPA price started at \$112.19/MWh in year 1 and escalates to
29 \$142.45/MWh throughout the term adjusted by TOD factors. The solar
30 PV project size is 109.44 MW and is in Kern County, CA.

31 ○ Centinela Solar Energy 1 (“CSE 1”): This is a twenty-year bilateral PPA
32 executed on May 10, 2010 and started delivering energy under the PPA in

1 2014. The PPA price is \$125.00/MWh adjusted by TOD factors.

2 SDG&E exercised its curtailment rights during the record period. The
3 solar PV project size is 125 MW and is in Calexico, CA.

- 4 ○ *Centinela Solar Energy 2 ("CSE -2")*: This twenty-year bilateral PPA
5 was executed on July 29, 2010. This expansion plant started delivering
6 energy under the PPA in 2014. The PPA price is \$125.00/MWh adjusted
7 by TOD factors, after meeting full capacity deliverability status in 2020.
8 SDG&E exercised its curtailment rights during the record period. The
9 solar PV project size is 45 MW and is in Calexico, CA.

- 10 ○ *CSolar IV South*: This twenty-five-year bilateral PPA was executed on
11 November 10, 2010 and started delivering energy under the PPA in 2013.
12 The PPA price is \$125.85/MWh adjusted by TOD factors. SDG&E
13 exercised its economic curtailment rights during the record period. The
14 solar PV project size is 130 MW and is in Calexico, CA.

- 15 ○ *CSolar IV West*: This twenty-five-year bilateral PPA was executed on
16 March 8, 2011 and started delivering energy under the PPA in 2016. The
17 PPA price is \$95.50/MWh adjusted by TOD factors. An Interconnect
18 Adjustment Charge of \$4.00/MWh was added to the PPA price from the
19 date of first delivery of energy through the last day of the second contract
20 year and \$5.30/MWh thereafter until the end of the contract term.
21 SDG&E exercised its economic curtailment rights during the record
22 period. The solar PV project size is 150 MW and is in Imperial Valley,
23 CA.

- 24 ○ *Desert Green Solar Farm*: This twenty-five-year bilateral PPA was
25 executed on March 31, 2011 and started delivering energy under the PPA
26 in 2014. The PPA price is \$139.50/MWh. The solar PV project size is
27 6.3 MW and is in Borrego Springs, CA.

- 28 ○ *Imperial Valley Solar 1 (Silver Ridge Mt Signal)*: This twenty-five-year
29 bilateral PPA was executed on February 3, 2012 and started delivering
30 energy under the PPA in 2013. The PPA price is \$98.59/MWh adjusted
31 by TOD factors. SDG&E exercised its curtailment rights during the

1 record period. The solar PV project size is 200 MW and is in Calexico,
2 CA.

- 3 ○ Maricopa West Solar PV: This fifteen-year RAM PPA was executed on
4 April 16, 2013 and started delivering energy under the PPA in 2015. The
5 RAM PPA price is \$55.00/MWh adjusted by TOD factors. The solar PV
6 project size is 20 MW and is in Taft, CA.
- 7 ○ Midway Solar Farm III (“Midway”) (a.k.a. 97WI 8ME LLC): This
8 twenty-year RAM PPA was executed on December 11, 2015 and started
9 delivering energy under the PPA in 2018. The RAM PPA price is
10 \$52.98/MWh adjusted by TOD factors. SDG&E exercised its curtailment
11 rights during the record period. The solar plant size is 20 MW and is in
12 Calipatria, CA.
- 13 ○ NLP Granger A82 Solar: This twenty-year ReMat PPA was executed on
14 April 3, 2014 and started delivering energy under the PPA in 2016. The
15 solar PV PPA price is \$89.23/MWh adjusted by TOD factors. The solar
16 PV project size is 3 MW and is in Valley Center, CA.
- 17 ○ NLP Valley Center Solar: This twenty-year ReMat PPA was executed on
18 July 20, 2015 and started delivering energy under the PPA in 2016. The
19 PPA price is \$89.23/MWh adjusted by TOD factors. The solar PV
20 project size is 2.33 MW and is in Valley Center, CA.
- 21 ○ SG2 Imperial Valley: This twenty-five-year bilateral PPA was executed
22 on June 24, 2011 and started delivering energy under the PPA in 2014.
23 The PPA price started at \$90.93/MWh escalated to \$129.98/MWh
24 throughout the term adjusted by TOD factors. SDG&E exercised its
25 curtailment rights during the record period. There are three 50 MW solar
26 PV projects for a total project size of 150 MW, all located in the Imperial
27 Valley, CA.
- 28 ○ Sol Orchard San Diego 20 LLC (“Ramona I”): This twenty-five-year
29 bilateral PPA was executed on April 11, 2011 and started delivering
30 energy under the PPA in 2013. The PPA price started at \$111.86/MWh
31 escalates to \$143.46/MWh throughout the term and adjusted by TOD
32 factors. The solar PV project size is 2 MW and is in Ramona, CA.

- Sol Orchard San Diego 21 LLC (“Ramona 2”): This twenty-five-year bilateral PPA was executed on April 11, 2011 and started delivering energy under the PPA in 2013. The PPA price started at \$111.86/MWh and escalated to \$143.46/MWh and adjusted by TOD factors. The solar PV project size is 5 MW and is in Ramona, CA.
- Sol Orchard San Diego 22 LLC (“Valley Center 1”): This twenty-five-year bilateral PPA was executed on April 11, 2011 and started delivering energy under the PPA in 2013. The PPA price started at \$111.86/MWh escalates throughout the term to \$143.46/MWh and adjusted by TOD factors. The solar PV project size is 2.5 MW and is in Valley Center, CA.
- Sol Orchard San Diego 23 LLC (“Valley Center 2”): This twenty-five-year bilateral PPA was executed on April 11, 2011 and started delivering energy under the PPA in 2013. The PPA price started at \$111.86/MWh in Year 1 and escalates to \$143.46/MWh throughout the term adjusted by TOD factors. The solar PV project size is 5.0 MW and is in Valley Center, CA.
- Solar Borrego I (formerly NRG Solar Borrego I): This twenty-five-year bilateral PPA was executed on January 25, 2011 and started delivering energy under the PPA in 2013. The PPA price is \$130.00/MWh adjusted by TOD factors. SDG&E exercised its economic curtailment rights during the record period. The solar PV project size is 26 MW and is in Borrego Springs, CA.
- TallBear Seville: This twenty-year RAM PPA was executed on December 13, 2012. The project started delivering energy under the PPA in 2015. The RAM PPA price is \$76.63/MWh adjusted by TOD factors. SDG&E exercised its economic curtailments during the record period. The solar PV project size is 20 MW and is in Imperial County, CA.
- Wister Solar (ORNI 33): This twenty-year Green Tariff PPA was executed on April 19, 2018. The plant started delivering energy under the PPA in July 2022. [REDACTED]
This solar PV project is 20 MW and is located in San Bernardino Base and Meridian, in an unincorporated area of Imperial County, CA.

4. WIND

- Coram Energy, LLC: This fifteen-year bilateral PPA was executed on July 12, 2010. The plant started delivering energy under the PPA in 2011. The PPA price started at \$95.00/MWh and escalates to \$109.20/MWh through the term adjusted by TOD factors. The wind project size is 7.5 MW and is in the Tehachapi area of CA.
- Energía Sierra Juárez: This twenty-year bilateral PPA with Sempra Infrastructure Partners, LP, a Sempra affiliate, was executed on April 6, 2011 and started delivering energy under the PPA in 2015. The PPA price is \$106.50/MWh adjusted by TOD factors. SDG&E exercised its economic curtailment rights during the record period. The wind project size is 155.1 MW and is in Ejido Jacume, Mexico, and it is directly interconnected to SDG&E's East County Substation.
- Energía Sierra Juárez 2 ("ESJ 2"): This twenty-year RAM PPA was executed on November 16, 2017 with Sempra Infrastructure Partners, LP, a Sempra affiliate and was submitted to the CPUC in AL-3151-E. The plant began commercial operation on January 15, 2022. The PPA price is \$56.00/MWh adjusted by TOD factors. SDG&E exercised its economic curtailment rights during the record period. The project size is 105 MW and is located in Ejido Jacume, Mexico and interconnected to SDG&E's East County Substation.
- Kumeyaay Wind LLC: This twenty-year bilateral PPA was executed on May 31, 2004 and started delivering energy under the PPA in 2006. The PPA price started at \$49.00/MWh and escalated to \$51.75/MWh in year five and then levelized through the term. SDG&E exercised its economic curtailment rights during the record period. The wind project size is 50 MWs and is located on the Campo Indian Reservation in eastern San Diego County, CA.
- Manzana Wind (Avangrid Renewables): This twenty-year bilateral PPA was executed on February 14, 2012 and started delivering energy under the PPA in 2012. The PPA price is \$95.00/MWh minus the average 15

Minute real-time market prices. SDG&E exercised its economic curtailment rights during the record period. SDG&E purchases 53%, or 100 MW of the 189 MW wind project located in Rosamond, CA.

- Naturener Rim Rock: This twenty-year bilateral PPA was executed on May 5, 2009 and started delivering energy under the PPA in 2013. The transaction is a combination of two products. SDG&E buys the output at \$105.99/MWh which includes the green attributes. Rim Rock buys back the output at \$62.00/MWh, excluding green attributes, at the same delivery point. The wind project size is 189 MW and is in Toole and Glacier County, Montana.
- Ocotillo Express, LLC: This twenty-year bilateral PPA was executed on February 1, 2011. The project started delivering energy under the PPA in 2013. The PPA price is \$105.00/MWh. The wind project size is 265.29 MW and is in Imperial Valley, CA. SDG&E exercised its curtailment rights during the record period.
- Pacific Wind Lessee, LLC: This twenty-year bilateral PPA was executed on April 20, 2010. The plant started delivering energy under the PPA in 2012. The PPA price is \$115.47/MWh. SDG&E exercised its curtailment rights in the record year. The wind project size is 140 MW and is Rosamond, CA.
- San Gorgonio Westwinds II (“SGWII”): This ten-year RAM PPA was executed on April 16, 2013. The wind plant started delivering energy under the PPA in 2015. The PPA price is \$71.00/MWh adjusted by TOD factors. The project size is 11.2 MW and is in Palm Springs, CA.

5. Hybrid – Energy Storage/Solar PV

- BCE Los Alamitos, LLC: This ten-year PPTA was executed on December 23, 2020. The plant reached commercial operation November 12, 2023. [REDACTED]
[REDACTED] The Project is comprised of two (2) Project Systems, each of which consists of a 10 MW solar generating facility and

a 5MW / 20 MWh battery energy storage system and is located in Los Alamitos, CA.

B. Tolling Agreements–

1. Combined Cycle/Peaking (Natural Gas)

During the record period, SDG&E had the following operational combined cycle and quick-start gas turbine plants. SDG&E purchases the natural gas and pays the GHG costs.

- Carlsbad Energy Center (CEC): This twenty-year Power Purchase Tolling Agreement (“PPTA”) was executed on June 1, 2015. The plant began commercial operations on December 12, 2018. The capacity price starts at \$191.54 and escalates to \$231.40/kW-year throughout the term and the variable O&M price is \$6.00/MWh times a CPIA. The gas turbine quick start *plant has two units – one unit consisting of four (4) GE LMS100 PA+ gas turbines* and the other unit consisting of one (1) GE LMS100 PA+ gas turbine. The plant is approximately 527 MW and is in Carlsbad, CA.
- El Cajon Energy Center (ECEC): This twenty-five-year Power Purchase & Tolling Agreement (“PPTA”) was executed on May 24, 2010 and started commercial operations in 2010. The capacity price started at \$105.10/kW-year plus \$37.50/kW-year times a CPIA and the variable O&M price started at \$7.00/MWh times CPIA. The quick-start peaking plant is approximately 47 MW and is in El Cajon, CA.
- Escondido Energy Center (EEC): This twenty-five-year PPTA was executed on February 25, 2011 and started commercial operations in 2014. The capacity price started at \$106.50/kW-year plus \$43.50/kW-year times CPIA and the variable O&M price started at \$7.00/MWh times a CPIA. The quick-start peaking plant is approximately 47 MW and is in Escondido, CA.
- Orange Grove Energy Center (“OGEC”): This twenty-five-year PPTA was executed on July 14, 2009 and started commercial operations in 2010. The capacity price is \$172.12/kW-year plus a base rent of

\$125,000 times a CPIA and the variable O&M price was \$5.01/MWh times a CPIA. The two-gas turbine quick-start peaking plant is approximately 99 MW and is in Pala, CA. OGEC leased its property for the plant from SDG&E until the end of the PPTA which ends in 2035 after which the lease will expire and the title to the plant will transfer at no cost to SDG&E. SDG&E may, at its option, request OGE to remove the plant and return the property to SDG&E in its original condition.

- Pio Pico Energy Center(PPEC): This twenty-five-year PPTA plant was executed on February 2, 2011 and started commercial operations for SDG&E on June 1, 2017. The capacity price is \$162.15/kW-year plus a fixed O&M price of \$35.00/kW-year and the variable O&M price was \$4.25/MWh times a CPIA. The quick-start peaking plant is comprised of three GE LMS100 PA+ gas turbines with a total capacity of approximately 336 MW and is in Otay Mesa, San Diego, near the United States/Mexico International Border.

2-Battery Energy Storage Systems (BESS)

- Johanna Energy Center, LLC: This ten-year PPTA was executed on November 18, 2020. The plant reached commercial operation in July 2022. [REDACTED]
[REDACTED]
[REDACTED]. The battery storage facility is 20 MW/80 MWh and is in Santa Ana, CA.
- Valley Center Storage II, LLC: This fifteen-year PPTA was executed on August 31, 2020. The plant began commercial operation on November 29, 2021. The capacity price is \$177.80/kW-year and the variable O&M is \$1.00/MWh pursuant to Dispatch Notices. The battery storage facility is 54 MW/216 MWh and is in Valley Center, CA.
- Sagebrush Storage I, LLC: This ten-year PPTA was executed on October 6, 2021. The project reached commercial operation on May 23, 2023. [REDACTED]
[REDACTED]

1 [REDACTED] The project is 80MW / 320 MWh battery
2 energy storage located in Kern County, CA.

- 3 ○ Bottleneck Energy Storage: This fifteen-year PPTA was executed
4 November 30, 2022. The plant reached commercial operation on [REDACTED]
5 [REDACTED]. The project is 80MW / 320 MWh battery energy storage in
6 Tulare County, CA. [REDACTED]. In 2024,
7 SDG&E collected \$3,856,666.37 in delay damages.
- 8 ○ Cald Energy Storage: This twelve-year PPTA was executed September
9 29, 2022. The plant is reached commercial operation on [REDACTED]
10 The project is 100MW / 400 MWh battery energy storage in Los Angeles
11 County, CA. [REDACTED]. In 2024, SDG&E
12 collected \$691,652 in delay damages.
- 13 ○ EDSAN 1B GROUP 2, LLC: This fifteen-year PPTA was executed
14 December 11, 2023. This project consists of 47 MW battery energy
15 storage, located in Kern County, California and reached initial delivery
16 on October 16, 2024. [REDACTED]. In 2024,
17 SDG&E collected \$487,500 in delay damages

18 C. QF/CHP Projects

19 1. Renewable

- 20 ○ San Francisco Peak Hydro Plant: This evergreen SO1 QF PPA was
21 executed on August 29, 1985. The small hydro plant started delivering
22 energy under the PPA effective in December 1985. The energy and
23 capacity prices are SRAC. The conduit hydro plant size is 0.4 MW and is
24 in Oceanside, CA.
- 25 ○ Badger Filtration Plant (Santa Fe Badger Irrigation District (SFID))
26 This six-year SO1 QF PPA was executed on October 7, 2019. The small
27 hydro plant started delivering energy under the PPA effective in July
28 2020; however, it only generates electricity if there is excess water
29 flowing through the plant. Seller is excused from meeting the minimum
30 generation requirement if the shortfall is due to lack of rainfall. The

energy and capacity prices are SRAC. The conduit hydro plant size is 0.6 MW and is in Rancho Santa Fe, CA.

2. Conventional

- Goal Line, LLP: This seven-year dispatchable CHP PPA was executed on July 2, 2013. The PPA is a restated QF SO2 PPA. The plant started delivering energy under the CHP PPA in 2015. The firm capacity price is \$172.00/kW-yr. plus dispatchable rights from \$23.40 - \$33.00/kW-yr. over the PPA term. The variable O&M is \$5.63/MWh times a Consumer Price Index Adjustment (“CPIA”). The converted cogeneration QF project size is 49.9 MW and is in Escondido, CA.
- Grossmont Hospital: This ten-year non-dispatchable CHP PPA - less than 5 MW PPA was executed on May 1, 2016. The plant started delivering energy under the PPA in January 2017. The energy and capacity prices are SRAC. The converted cogeneration QF project size is 4.6 MW and is in La Mesa, CA.

D. Market Purchases

During the record period, SDG&E did not have any firm market Edison Electric Institute (“EEI”) PPAs.

E. Resource Adequacy

During the record period, SDG&E had 9 long-term RA contracts in operation and one contract executed, but not yet operational. Please refer to the table in Attachment 1 for additional details.

F. Bundled Energy & REC Sales

During the record period, SDG&E delivered energy plus green attributes pursuant to two Edison Electric institute (“EEI”) Confirmations and one WSPP Confirmation:

- Clean Energy Alliance (EEI): This ten-year Confirmation was executed on December 20, 2021. [REDACTED]

- 1 [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]
- 8 ○ San Diego Community Power (EEI): This twelve-year Confirmation was
- 9 executed on December 20, 2021. [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 ○ San Diego Community Power (WSPP): This two-year confirmation was
- 16 executed July 19, 2022. The delivery period is January 1, 2023 through
- 17 December 31, 2025. The product is firm delivery of all Category 1
- 18 bundled electric energy and associated Green Attributes from Honeylake
- 19 Power. [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED] Additionally, pursuant to D. 21-05-030,
- 22 during the record year SDG&E managed a total of 22 contracts under
- 23 Voluntary Allocation and Market Offer (“VAMO”) for RPS. The table
- 24 below provides additional information about these contracts.

<u>Contracts Administered (Project Names)</u>	<u>Execution Date</u>	<u>Year Executed & PCIA Vintage</u>	<u>Contract Start Date</u>	<u>Contract End Date</u>	<u>Delivery Period (Years)</u>
Orange County Power Authority - L/T Unbundled	7/28/2022	2022	[REDACTED]		
Commercial Energy of Montana - L/T Unbundled	7/29/2022	2022			
Direct Energy Business Marketing, LLC - L/T unbundled	7/28/2022	2022			
Shell Energy North America (US) - L/T unbundled	8/5/2022	2022			

Orange County Power Authority - L/T Bundled	7/28/2022	2022
Commercial Energy of Montana - L/T Bundled	7/29/2022	2022
Direct Energy Business Marketing, LLC - L/T Bundled	7/28/2022	2022
Shell Energy North America (US) - L/T bundled	8/5/2022	2022
San Diego Community Power ("SDCP") - L/T Market Offer (from LT portfolio)	6/30/2023	2023



G. Pre-Commercial Contracts

During the record period, SDG&E managed the following pre-commercial PPAs.

1. Energy Storage

[REDACTED] Nova Power Bank Storage: This fifteen-year PPTA was executed April 12, 2023. This project consists of 60 MW battery energy storage, located in Riverside County, California and is expected to reach commercial operation in November of 2025. [REDACTED]

2. Hybrid (Solar/Battery)

- **Yellowpine Solar III:** This fifteen-year PPTA was executed January 24, 2023. The hybrid solar/battery energy storage project consists of 50MW of battery capacity and 65 MW of solar, located in Clark County, Nevada. [REDACTED]. The full, hybrid solar/battery project is expected to reach commercial operation in [REDACTED]. [REDACTED]
- **Luna Valley Solar:** This fifteen-year PPTA was executed April 11, 2023 and forms a contractual hybrid solar/battery energy storage project with Daggett Storage. Luna Valley consists of 113.5 MW solar photovoltaic located in Fresno County, California. [REDACTED]. The project is expected to reach commercial operation in [REDACTED]
- **Daggett Storage:** This fifteen-year PPTA was executed April 11, 2023 and forms a contractual hybrid solar/battery energy storage project with Luna Valley Solar. Daggett Storage consists of 113.5 MW battery energy storage located in San Bernardino County, California. The project is expected to reach commercial operation in [REDACTED]. On June 17, 2024, SDG&E executed the second amendment to the agreement, removing cross-default language of the Luna Valley Solar and Daggett Storage PPAs. [REDACTED]

1 **3. QF**

- 2 ○ *Empire II Starlight*: This twelve-year PPTA was executed November 18,
- 3 2022. The plant is expected to reach commercial operation [REDACTED].
- 4 [REDACTED]
- 5 [REDACTED]. The project consists of a
- 6 20 MW solar generating facility and a 17.4MWh / 69.6 MWh energy
- 7 storage system in Boulevard, CA. [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 ○

11 **H. Expired and Terminated PPAs**

12 During the record period, the following projects were part of SDG&E’s portfolio and may or

13 may not have operated during the record period. The PPAs either expired or were terminated:

- 14 ○ *Sycamore Energy 2, LLC*: This ten-year Renewable Market Adjusting
- 15 Tariff (“ReMat”) PPA was executed on March 7, 2014. The plant started
- 16 delivering energy under the PPA in 2014 and expired March 29th 2024.
- 17 The PPA price is \$89.23/MWh adjusted by TOD factors. During the
- 18 record year, a review of the PPA resulted in *billing Sycamore for*
- 19 *\$103,203 for forecasting penalties* from Feb 2023 to Jan 2024. Sycamore
- 20 agreed to pay such penalties. The landfill gas plant size is 2.25 MW and
- 21 is in Santee, CA.
- 22 ○ *Naturener Glacier 2*: This fifteen-year bilateral PPA was executed on
- 23 May 23, 2008 and started delivering energy under the PPA in 2009 and
- 24 expired October 15th 2024. The transaction is a combination of two
- 25 products. SDG&E buys the output at \$98.00/MWh which includes the
- 26 green attributes. Glacier 2 buys back the output at \$68.00/MWh,
- 27 excluding green attributes, at the same delivery point. The wind project
- 28 size is 103.5 MW is in Ethridge, Montana.
- 29 ○ *Alta Oak Realty LLC (formerly Oak Creek Wind Power, LLC)*: This ten-
- 30 year RAM PPA was executed on April 16, 2013 and started delivering

energy under the PPA in 2014 and expired January 25th, 2024. The PPA price is \$67.00/MWh adjusted by TOD factors. The wind project size is 3.5 MW and is in Imperial Valley, CA.

- C.P. Kelco: This seven-year non-dispatchable CHP PPA was executed on November 19, 2015. The cogeneration plant started delivering energy under the PPA on June 1, 2017 and expired May 31st, 2024. The energy and capacity prices are SRAC. The converted cogeneration QF project size is 26.65 MW and is in San Diego, CA.
- Yuma Cogeneration Associates ("YCA"): This dispatchable CHP PPA was executed on August 19, 2014. The plant started delivering energy under the PPA in 2015 and expired May 27th, 2024. Under the CHP PPA, YCA acts as its own fuel manager and purchases gas from Southwest Gas. The firm capacity price was \$140/kW-yr. with a 17.65% bonus payment during the Summer Peak period and a variable O&M rate of \$3.68/MWh times the CPIA. The converted cogeneration QF project size is 55 MW and is in Yuma, AZ.
- Olivenhain-Hodges Pump Storage Facility: This twenty-five-year Bilateral PPA was executed on January 29, 2004 and started delivering energy under the PPA in 2012. The capacity price is \$65.00/kW-year plus a variable rate at \$5.00/kW-year times CPIA and the variable O&M is \$2.00/MWh times the CPIA. The hydro pump storage facility is 40 MW and is in Escondido, CA. The contract was terminated on July 3, 2024 due to the ongoing Force Majeure event preventing the project from operating until the dam is rebuilt, which is expected to take many years to complete.
- The Following 10 VAMO Contracts expired at the end of 2024:

<u>Contracts Administered (Project Names)</u>	<u>Execution Date</u>	<u>Year Executed & PCIA Vintage</u>	<u>Contract Start Date</u>	<u>Contract End Date</u>	<u>Delivery Period (Years)</u>
Orange County Power Authority -S/T Bundled	7/28/2022	2022	3/1/2023	12/31/2024	2
Orange County Power Authority -S/T Unbundled	7/28/2022	2022	3/1/2023	12/31/2024	2

Commercial Energy of Montana - S/T Bundled	7/29/2022	2022	3/1/2023	12/31/2024	2
Commercial Energy of Montana - S/T Unbundled	7/29/2022	2022	3/1/2023	12/31/2024	2
Direct Energy Business Marketing, LLC - S/T Bundled	7/28/2022	2022	3/1/2023	12/31/2024	2
Direct Energy Business Marketing, LLC - S/T Unbundled	7/28/2022	2022	3/1/2023	12/31/2024	2
Clean Power Alliance of Southern California S/T (bundled RECs)	3/8/2023	2023	1/1/2023	12/31/2024	2
BP Energy Company (unbundled Naturener RECs only)	3/31/2023	2023	1/1/2023	12/31/2024	2
San Diego Community Power ("SDCP") - L/T VA Unbundled (Rim Rock volumes only)	4/18/2023	2023	1/1/2023	12/31/2024	2
San Diego Community Power ("SDCP") - S/T Market Offer (from LT portfolio)	6/26/2023	2023	11/6/2023	12/31/2024	2

VII. CONCLUSION

Based on the foregoing, SDG&E's recorded contract expenses to the ERRRA are in conformance with the Public Utilities Code, Commission decisions, and the contract terms for the 2024 record period. SDG&E respectfully requests that the Commission find that SDG&E's contract administration and power procurement-related activities and costs for the record period were reasonable and therefore should be approved.

This concludes my prepared direct testimony.

1 **VIII. QUALIFICATIONS**

2 My name is Matt Richardson. My business address is 8315 Century Park Court, San Diego,
3 CA 92123. I am employed by SDG&E as a Senior Energy Administrator in the Electric & Fuel
4 Procurement Department. My present duties include managing the administration of Renewable
5 agreements, Tolling agreements, and other various jobs within the group. I have been employed by
6 SDG&E since 2009. I have been in my current position since March 2023. Prior to my current
7 role, I have been employed in other positions in the Procurement Department as well as the Asset
8 Accounting Department.

9 I graduated from California State University at San Marcos with a Bachelor of Science in
10 Accounting.

INDEX OF EXHIBITS & ATTACHMENTS

EXHIBIT A: E&FP Organizational Chart

EXHIBIT B: Pro-Forma Agreements

EXHIBIT C: SDG&E Direct Testimony of Kendall K. Helm (Electric and Fuel Procurement)
(October 2017) in the 2019 GRC proceeding (A.17-10-007)

ATTACHMENT 1 - **CONFIDENTIAL**:

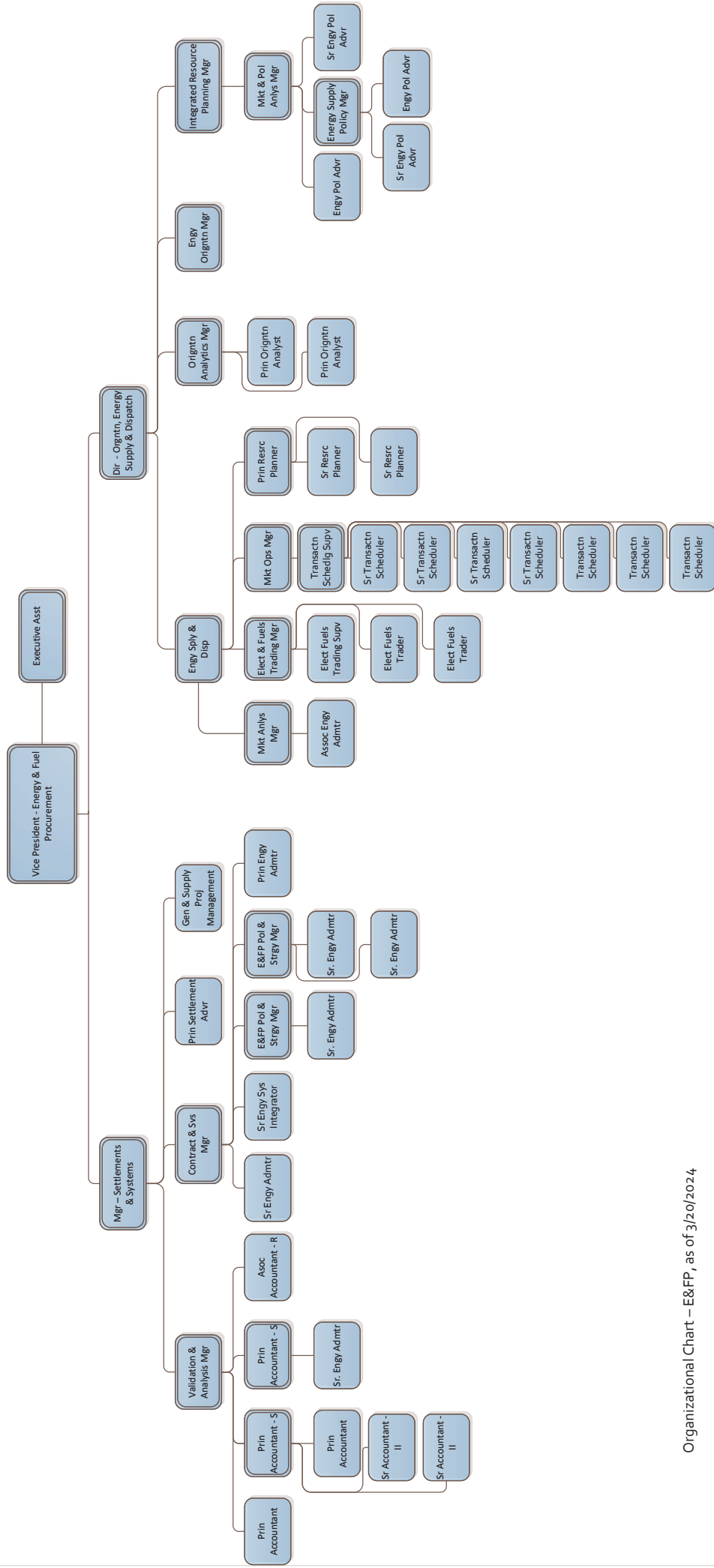
- a) Tab “Summary”
- b) Tab “Electric Contracts”:
 - 1. Contract Class & Project Name: Contracts that were in effect and their delivery amounts during the record period.
 - 2. Contract Terms: Contracts for the procurement of electric power, energy, or ancillary services in effect or under negotiation, initiation, revision, amendment, or termination.
 - 3. Payment Terms: Energy and capacity payment terms.
 - 4. New Contracts: New electric power, energy or ancillary services service contracts executed during the record period.
 - 5. Summary of Contract Modifications, Letter Agreements and Amendments filed in an AL or Application: Electric power, energy, or ancillary services amendments, modifications and/or letters agreements executed during the record period.
 - 6. Amendments & Modifications for Review in the ERRA Application: Amendments, modifications, renegotiations, and/or letter agreements executed during the record period that are being submitted for review through the ERRA application.
 - 7. Terminated Contracts: Summary of all its contracts which expired or terminated during the record period, and their relevant termination information.

- c) Tab GAS CONTRACTS - Contracts for the procurement of fuel services in effect or under negotiation, initiation, revision, amendment, or termination.
- d) Tab QF CONTRACTS – Monthly payments to QFs that sold energy to SDG&E during the record period.

ATTACHMENT 2 – CONFIDENTIALITY DECLARATION OF MATT RICHARDSON

EXHIBIT A

E&FP ORGANIZATIONAL CHART



Organizational Chart – E&FP, as of 3/20/2024

EXHIBIT B

PRO-FORMA AGREEMENTS

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Seller") and _____ ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2023 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

All Notices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () ____-____
Facsimile: () ____-____
Duns: _____
Federal Tax ID Number: _____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () ____-____
Facsimile: () ____-____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:

< company name >
< street address >
< city/state/zip >

Attn: _____
Day Ahead: () ____-____
Real Time: () ____-____
Facsimile: () ____-____

Payments:

San Diego Gas & Electric Company
 8315 Century Park Court
 San Diego CA 92123-1593
 Attn: Energy Accounting Manager
 Telephone: (858) 650-6177

Payments:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

Wire Transfer:

Union Bank of California
 445 South Figueroa Street
 Los Angeles CA 90071
 ABA Routing Number: 122000496
 Payee: San Diego Gas & Electric Company
 Account Number: 4430000352
 Confirmation: SDG&E – Major Markets

Wire Transfer:

< bank street address >
 < bank city/state/zip >
 ABA Routing Number: _____
 Payee: _____
 Account Number: _____
 Confirmation: _____
 Facsimile: () -

Credit and Collections:

San Diego Gas & Electric Company
 8315 Century Park Court CP 21C
 San Diego, CA 92123
 Attn: Energy Risk Manager
 Telephone: (858) 650-6190
 Email: sdge_mmcrcdit@sdge.com

Credit and Collections:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
 8330 Century Park Ct.
 San Diego, California 92123
 Attn: General Counsel
 Telephone: (858) 650-6141

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Article Two

Transaction Terms
 and Conditions

- ☐ Optional provision in Section 2.4.
 If not checked, inapplicable.

Article Four

Remedies for Failure
 to Deliver or Receive

- ☒ Accelerated Payment of Damages.
 If not checked, inapplicable.

Article Five

Events of Default; Remedies

- ☐ Cross Default for Party A:
☐ Party A: N/A _____ Cross Default Amount: N/A _____
☐ Other Entity: N/A _____ Cross Default Amount: N/A _____
- ☐ Cross Default for Party B:
☐ Party B: N/A _____ Cross Default Amount: N/A _____
☐ Other Entity: N/A _____ Cross Default Amount: N/A _____

5.6 Closeout Setoff

- ☒ Option A (Applicable if no other selection is made.)
☐ Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

☐ Option C (No Setoff) _____

Article 8Credit and
Collateral Requirements**8.1 Party A Credit Protection : [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☐ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☐ Not Applicable
☐ Applicable
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
- (e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:
Party A Collateral Threshold: \$ _____;
provided, however, that Party A's Collateral
Threshold shall be zero if an Event of Default or

Potential Event of Default with respect to Party A
has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if
Party A's Credit Rating falls below _____
from S&P or _____ from Moody's or if Party A
is not rated by either S&P or Moody's

☐ Other:

Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10

Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then
Schedule M shall apply and further modifications to this Confirm
will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the
Master Agreement specified in that certain Errata
published by the Edison Electric Institute (version 1.1,
July 18, 2007) are hereby incorporated herein as if set
forth in full.

2. Section 1.60 is amended by inserting the words "in
writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and
replace with the following:

"A Transaction, or an amendment, modification or
supplement thereto, shall be entered into only upon a
writing signed by both Parties evidencing the
commercial terms of such Transaction (a
"Confirmation")."

4. Section 2.3 is deleted in its entirety and replaced with the

following:

“2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties.”

5. Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.
6. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“10.6 THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

8. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. **Definitions**

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.15 “Contract Term” has the meaning set forth in Section 2.1.
- 1.16 “CPUC” means the California Public Utilities Commission.
- 1.17 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.18 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.19 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.20 “Delivery Period” has the meaning specified in Section 3.3.
- 1.21 “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.22 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.23 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.24 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.25 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.26 “GADS” means the Generating Availability Data System, or its successor.
- 1.27 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.28 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.29 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.30 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

- 1.31 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 “LSE” means load-serving entity.
- 1.33 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.34 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.35 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.37 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.38 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.39 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.40 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.41 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.42 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.43 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.44 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.45 “Product” has the meaning specified in Section 3.1.
- 1.46 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.47 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.

- 1.48 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.49 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.50 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.51 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.52 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.53 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.54 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.55 “RMR Contract” has the meaning set forth in the Tariff.
- 1.56 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.57 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.58 “Seller” has the meaning specified in the introductory paragraph.
- 1.59 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.60 “Substitution Rules” has the meaning set forth in Section 3.8(b).
- 1.61 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.62 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.63 “Transaction” has the meaning specified in the introductory paragraph.
- 1.64 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.65 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.66 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

- 1.67 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.68 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes] *[Comment: Second bracketed language to be used if the Product includes flexible capacity]*) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) [The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.] *[Comment: This Section 3.1(c) to be used if the Product includes flexible capacity.]*

3.2 Unit Contingent Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for reasons of Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10.

3.3 Delivery Period

The "Delivery Period" shall be _____ through _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC,

owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]* ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.6.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "Monthly Payment" to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

A = applicable Contract Price (in \$/kW-day) for that calendar day

B = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity “**B**” exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity “**B**” be less than zero.

d = Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all third-party claims brought against Buyer for Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and

- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Capacity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CAISO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

As used in this Section 6.1, "commercially reasonable actions" or "good faith" shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller's Represents, Warrants and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

9. Collateral Requirements [NOTE to respondents: Amount to be determined by SDG&E credit department]

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Buyer's damages. Seller shall return to Buyer any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Buyer arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEl Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller's Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

a _____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED as to legal form _____

APPENDIX A

Unit Information

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

LETTER OF CREDIT FORM

IRREVOCABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

_____(the "Bank") hereby establishes this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$ _____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation in compliance on or prior to 5:00 p.m. New York time, on or prior to the Expiration Date, of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored except as described in the succeeding paragraph.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 ("UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 14(8) AND 36 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. MATTERS NOT COVERED BY THE UCP SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

AUTHORIZED SIGNATURE for Bank

By: _____

Title: _____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number: _____

The undersigned _____, an authorized representative of San Diego Gas & Electric Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Standby Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, for the following reason(s) [check applicable provision]:
 - [] A. An Event of Default, as defined in the [INSERT] Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing or an amount is due and unpaid to Beneficiary by Applicant.
 - [] B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND _____ /100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Seller") and _____ ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2023 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

All Notices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () ____-____
Facsimile: () ____-____
Duns: _____
Federal Tax ID Number: _____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () ____-____
Facsimile: () ____-____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:

< company name >
< street address >
< city/state/zip >

Attn: _____
Day Ahead: () ____-____
Real Time: () ____-____
Facsimile: () ____-____

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Payments:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets

Wire Transfer:

< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: () -

Credit and Collections:

San Diego Gas & Electric Company
8315 Century Park Court CP 21CSan
Diego, CA 92123
Attn: Energy Risk Manager
Telephone: (858) 650-6190
Email: sdge_mmcrcdit@sdge.com

Credit and Collections:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

**With additional Notices of an Event of
Default or Potential Event of Default to:**

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141

**With additional Notices of an Event of
Default or Potential Event of Default to:**

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Article Two

Transaction Terms
and Conditions

- ☐ Optional provision in Section 2.4.
If not checked, inapplicable.

Article Four

Remedies for Failure
to Deliver or Receive

- ☒ Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- ☐ Cross Default for Party A:
☐ Party A: N/A _____ Cross Default Amount: N/A _____
☐ Other Entity: N/A _____ Cross Default Amount: N/A _____
- ☐ Cross Default for Party B:
☐ Party B: N/A _____ Cross Default Amount: N/A _____
☐ Other Entity: N/A _____ Cross Default Amount: N/A _____

5.6 Closeout Setoff

- ☒ Option A (Applicable if no other selection is made.)
☐ Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

☐ Option C (No Setoff) _____

Article 8Credit and
Collateral Requirements**8.1 Party A Credit Protection : [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☐ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☐ Not Applicable
☐ Applicable
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
- (e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:
Party A Collateral Threshold: \$ _____;
provided, however, that Party A's Collateral
Threshold shall be zero if an Event of Default or

Potential Event of Default with respect to Party A
has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if
Party A's Credit Rating falls below _____
from S&P or _____ from Moody's or if Party A
is not rated by either S&P or Moody's

☐ Other:

Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10

Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then
Schedule M shall apply and further modifications to this Confirm
will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the
Master Agreement specified in that certain Errata
published by the Edison Electric Institute (version 1.1,
July 18, 2007) are hereby incorporated herein as if set
forth in full.

2. Section 1.60 is amended by inserting the words "in
writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and
replace with the following:

"A Transaction, or an amendment, modification or
supplement thereto, shall be entered into only upon a
writing signed by both Parties evidencing the
commercial terms of such Transaction (a
"Confirmation")."

4. Section 2.3 is deleted in its entirety and replaced with the

following:

“2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties.”

5. Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.
6. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“10.6 THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

8. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.15 “Contract Term” has the meaning set forth in Section 2.1.
- 1.16 “CPUC” means the California Public Utilities Commission.
- 1.17 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.18 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.19 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.20 “Delivery Period” has the meaning specified in Section 3.3.
- 1.21 “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.22 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.23 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.24 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.25 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.26 “GADS” means the Generating Availability Data System, or its successor.
- 1.27 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.28 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.29 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.30 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

- 1.31 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 “LSE” means load-serving entity.
- 1.33 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.34 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.35 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.37 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.38 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.39 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.40 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.41 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.42 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.43 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.44 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.45 “Product” has the meaning specified in Section 3.1.
- 1.46 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.47 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.

- 1.48 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.49 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.50 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.51 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.52 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.53 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.54 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.55 “RMR Contract” has the meaning set forth in the Tariff.
- 1.56 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.57 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.58 “Seller” has the meaning specified in the introductory paragraph.
- 1.59 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.60 “Substitution Rules” has the meaning set forth in Section 3.8(b).
- 1.61 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.62 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.63 “Transaction” has the meaning specified in the introductory paragraph.
- 1.64 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.65 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.66 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

- 1.67 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.68 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes] *[Comment: Second bracketed language to be used if the Product includes flexible capacity]*) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) [The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.] *[Comment: This Section 3.1(c) to be used if the Product includes flexible capacity.]*

3.2 Unit Contingent Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for reasons of Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10.

3.3 Delivery Period

The "Delivery Period" shall be _____ through _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC,

owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]* ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.6.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "Monthly Payment" to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

A = applicable Contract Price (in \$/kW-day) for that calendar day

B = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity “**B**” exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity “**B**” be less than zero.

d = Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all third-party claims brought against Buyer for Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and

- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Capacity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CAISO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

As used in this Section 6.1, "commercially reasonable actions" or "good faith" shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller's Represents, Warrants and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

9. Collateral Requirements [NOTE to respondents: Amount to be determined by SDG&E credit department]

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Buyer's damages. Seller shall return to Buyer any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Buyer arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEl Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller's Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

a _____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED as to legal form _____

APPENDIX A

Unit Information

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

LETTER OF CREDIT FORM

IRREVOCABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$ _____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation in compliance on or prior to 5:00 p.m. New York time, on or prior to the Expiration Date, of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored except as described in the succeeding paragraph.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 ("UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 14(8) AND 36 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. MATTERS NOT COVERED BY THE UCP SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

AUTHORIZED SIGNATURE for Bank

By: _____

Title: _____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number: _____

The undersigned _____, an authorized representative of San Diego Gas & Electric Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Standby Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, for the following reason(s) [check applicable provision]:
 - [] A. An Event of Default, as defined in the [INSERT] Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing or an amount is due and unpaid to Beneficiary by Applicant.
 - [] B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND _____ /100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Seller") and _____ ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2023 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

All Notices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () ____-____
Facsimile: () ____-____
Duns: _____
Federal Tax ID Number: _____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () ____-____
Facsimile: () ____-____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:

< company name >
< street address >
< city/state/zip >

Attn: _____
Day Ahead: () ____-____
Real Time: () ____-____
Facsimile: () ____-____

Payments:

San Diego Gas & Electric Company
 8315 Century Park Court
 San Diego CA 92123-1593
 Attn: Energy Accounting Manager
 Telephone: (858) 650-6177

Payments:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

Wire Transfer:

Union Bank of California
 445 South Figueroa Street
 Los Angeles CA 90071
 ABA Routing Number: 122000496
 Payee: San Diego Gas & Electric Company
 Account Number: 4430000352
 Confirmation: SDG&E – Major Markets

Wire Transfer:

< bank street address >
 < bank city/state/zip >
 ABA Routing Number: _____
 Payee: _____
 Account Number: _____
 Confirmation: _____
 Facsimile: () -

Credit and Collections:

San Diego Gas & Electric Company
 8315 Century Park Court CP 21C
 San Diego, CA 92123
 Attn: Energy Risk Manager
 Telephone: (858) 650-6190
 Email: sdge_mmcrcdit@sdge.com

Credit and Collections:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
 8330 Century Park Ct.
 San Diego, California 92123
 Attn: General Counsel
 Telephone: (858) 650-6141

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Article Two

Transaction Terms
 and Conditions

- ☐ Optional provision in Section 2.4.
 If not checked, inapplicable.

Article Four

Remedies for Failure
 to Deliver or Receive

- ☒ Accelerated Payment of Damages.
 If not checked, inapplicable.

Article Five

Events of Default; Remedies

- ☐ Cross Default for Party A:
☐ Party A: N/A _____ Cross Default Amount: N/A _____
☐ Other Entity: N/A _____ Cross Default Amount: N/A _____
- ☐ Cross Default for Party B:
☐ Party B: N/A _____ Cross Default Amount: N/A _____
☐ Other Entity: N/A _____ Cross Default Amount: N/A _____

5.6 Closeout Setoff

- ☒ Option A (Applicable if no other selection is made.)
☐ Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

☐ Option C (No Setoff) _____

Article 8Credit and
Collateral Requirements**8.1 Party A Credit Protection : [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☐ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☐ Not Applicable
☐ Applicable
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
- (e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:
Party A Collateral Threshold: \$ _____;
provided, however, that Party A's Collateral
Threshold shall be zero if an Event of Default or

Potential Event of Default with respect to Party A
has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if
Party A's Credit Rating falls below _____
from S&P or _____ from Moody's or if Party A
is not rated by either S&P or Moody's

☐ Other:

Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10

Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then
Schedule M shall apply and further modifications to this Confirm
will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the
Master Agreement specified in that certain Errata
published by the Edison Electric Institute (version 1.1,
July 18, 2007) are hereby incorporated herein as if set
forth in full.

2. Section 1.60 is amended by inserting the words "in
writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and
replace with the following:

"A Transaction, or an amendment, modification or
supplement thereto, shall be entered into only upon a
writing signed by both Parties evidencing the
commercial terms of such Transaction (a
"Confirmation")."

4. Section 2.3 is deleted in its entirety and replaced with the

following:

“2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties.”

5. Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.
6. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“10.6 THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

8. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. **Definitions**

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.15 “Contract Term” has the meaning set forth in Section 2.1.
- 1.16 “CPUC” means the California Public Utilities Commission.
- 1.17 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.18 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.19 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.20 “Delivery Period” has the meaning specified in Section 3.3.
- 1.21 “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.22 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.23 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.24 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.25 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.26 “GADS” means the Generating Availability Data System, or its successor.
- 1.27 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.28 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.29 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.30 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

- 1.31 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 “LSE” means load-serving entity.
- 1.33 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.34 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.35 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.37 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.38 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.39 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.40 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.41 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.42 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.43 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.44 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.45 “Product” has the meaning specified in Section 3.1.
- 1.46 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.47 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.

- 1.48 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.49 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.50 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.51 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.52 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.53 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.54 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.55 “RMR Contract” has the meaning set forth in the Tariff.
- 1.56 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.57 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.58 “Seller” has the meaning specified in the introductory paragraph.
- 1.59 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.60 “Substitution Rules” has the meaning set forth in Section 3.8(b).
- 1.61 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.62 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.63 “Transaction” has the meaning specified in the introductory paragraph.
- 1.64 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.65 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.66 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

- 1.67 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.68 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes] *[Comment: Second bracketed language to be used if the Product includes flexible capacity]*) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) [The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.] *[Comment: This Section 3.1(c) to be used if the Product includes flexible capacity.]*

3.2 Unit Contingent Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for reasons of Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10.

3.3 Delivery Period

The “Delivery Period” shall be _____ through _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC,

owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]* ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.6.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "Monthly Payment" to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

A = applicable Contract Price (in \$/kW-day) for that calendar day

B = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity “**B**” exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity “**B**” be less than zero.

d = Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all third-party claims brought against Buyer for Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and

- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Capacity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CAISO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

As used in this Section 6.1, "commercially reasonable actions" or "good faith" shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller's Represents, Warrants and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

9. Collateral Requirements [NOTE to respondents: Amount to be determined by SDG&E credit department]

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Buyer's damages. Seller shall return to Buyer any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Buyer arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEl Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller's Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

a _____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED as to legal form _____

APPENDIX A

Unit Information

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

LETTER OF CREDIT FORM

IRREVOCABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$ _____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation in compliance on or prior to 5:00 p.m. New York time, on or prior to the Expiration Date, of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored except as described in the succeeding paragraph.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 ("UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 14(8) AND 36 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. MATTERS NOT COVERED BY THE UCP SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

AUTHORIZED SIGNATURE for Bank

By: _____

Title: _____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number: _____

The undersigned _____, an authorized representative of San Diego Gas & Electric Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Standby Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, for the following reason(s) [check applicable provision]:
 - [] A. An Event of Default, as defined in the [INSERT] Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing or an amount is due and unpaid to Beneficiary by Applicant.
 - [] B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND _____ /100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Seller") and _____ ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2023 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

All Notices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () ____ - ____
Facsimile: () ____ - ____
Duns: _____
Federal Tax ID Number: _____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () ____ - ____
Facsimile: () ____ - ____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:

< company name >
< street address >
< city/state/zip >

Attn: _____
Day Ahead: () ____ - ____
Real Time: () ____ - ____
Facsimile: () ____ - ____

Payments:

San Diego Gas & Electric Company
 8315 Century Park Court
 San Diego CA 92123-1593
 Attn: Energy Accounting Manager
 Telephone: (858) 650-6177

Payments:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () ____-____
 Facsimile: () ____-____

Wire Transfer:

Union Bank of California
 445 South Figueroa Street
 Los Angeles CA 90071
 ABA Routing Number: 122000496
 Payee: San Diego Gas & Electric Company
 Account Number: 4430000352
 Confirmation: SDG&E – Major Markets

Wire Transfer:

< bank street address >
 < bank city/state/zip >
 ABA Routing Number: _____
 Payee: _____
 Account Number: _____
 Confirmation: _____
 Facsimile: () ____-____

Credit and Collections:

San Diego Gas & Electric Company
 8315 Century Park Court CP 21CSan
 Diego, CA 92123
 Attn: Energy Risk Manager
 Telephone: (858) 650-6190
 Email: sdge_mmcredit@sdge.com

Credit and Collections:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () ____-____
 Facsimile: () ____-____

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
 8330 Century Park Ct.
 San Diego, California 92123
 Attn: General Counsel
 Telephone: (858) 650-6141

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () ____-____
 Facsimile: () ____-____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Article Two

Transaction Terms
 and Conditions

☐ Optional provision in Section 2.4.
 If not checked, inapplicable.

Article Four

Remedies for Failure
 to Deliver or Receive

☒ Accelerated Payment of Damages.

If not checked, inapplicable.

Article Five

Events of Default; Remedies

- ☐ Cross Default for Party A:
☐ Party A: N/A_____ Cross Default Amount: N/A_____
☐ Other Entity: N/A_____ Cross Default Amount: N/A_____
- ☐ Cross Default for Party B:
☐ Party B: N/A_____ Cross Default Amount: N/A_____
☐ Other Entity: N/A_____ Cross Default Amount: N/A_____

5.6 Closeout Setoff

- ☒ Option A (Applicable if no other selection is made.)
☐ Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

☐ Option C (No Setoff)_____

Article 8

Credit and
Collateral Requirements

**8.1 Party A Credit Protection: : [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☐ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☐ Not Applicable
☐ Applicable
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
- (e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:

Party A Collateral Threshold: \$_____;
provided, however, that Party A's Collateral
Threshold shall be zero if an Event of Default or
Potential Event of Default with respect to Party A
has occurred and is continuing.

Party A Independent Amount: \$_____
Party A Rounding Amount: \$_____

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if
Party A's Credit Rating falls below _____
from S&P or _____ from Moody's or if Party A
is not rated by either S&P or Moody's

☐ Other:

Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10

Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then
Schedule M shall apply and further modifications to this Confirm
will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the
Master Agreement specified in that certain Errata
published by the Edison Electric Institute (version 1.1,
July 18, 2007) are hereby incorporated herein as if set
forth in full.

2. Section 1.60 is amended by inserting the words "in
writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and
replace with the following:

"A Transaction, or an amendment, modification or
supplement thereto, shall be entered into only upon a
writing signed by both Parties evidencing the
commercial terms of such Transaction (a

“Confirmation”).”

4. Section 2.3 is deleted in its entirety and replaced with the following:

“2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties.”

5. Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.
6. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“10.6 THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

8. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. **Definitions**

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.

- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.15 “Contract Term” has the meaning set forth in Section 2.1.
- 1.16 “CPUC” means the California Public Utilities Commission.
- 1.17 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.18 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.

- 1.19 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement.
- 1.20 “Delivery Period” has the meaning specified in Section 3.3.
- 1.21 “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.22 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.23 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.24 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.25 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.26 “GADS” means the Generating Availability Data System, or its successor.
- 1.27 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.28 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.29 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical

location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.

- 1.30 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.31 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 “LSE” means load-serving entity.
- 1.33 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.34 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.35 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.37 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.38 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.39 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.40 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.41 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.42 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.43 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.44 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.

- 1.45 “Product” has the meaning specified in Section 3.1.
- 1.46 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.47 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.48 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.49 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.50 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.51 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.52 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.53 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.54 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.55 “RMR Contract” has the meaning set forth in the Tariff.
- 1.56 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.57 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.58 “Seller” has the meaning specified in the introductory paragraph.
- 1.59 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.60 “Substitution Rules” has the meaning set forth in Section 3.8(b).
- 1.61 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes][*Comment: Include bracketed language if the Product includes flexible capacity*].
- 1.62 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.63 “Transaction” has the meaning specified in the introductory paragraph.

- 1.64 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.65 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.66 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.67 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.68 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes] *[Comment: Second bracketed language to be used if the Product includes flexible capacity]*) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) [The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.] *[Comment: This Section 3.1(c) to be used if the Product includes flexible capacity.]*

3.2 Unit Contingent Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for reasons of Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10.

3.3 Delivery Period

The "Delivery Period" shall be _____ through _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery

Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]* ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.6.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a “Monthly Payment” to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

***A** = applicable Contract Price (in \$/kW-day) for that calendar day*

***B** = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity “**B**” exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity “**B**” be less than zero.*

***d** = Total number of calendar days in the respective Monthly Delivery Period*

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day)
January	
February	
March	
April	
May	
June	

Contract Month	Capacity Price (\$/kW-day)
July	
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all third-party claims brought against Buyer for Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. **Seller's Failure to Deliver Contract Quantity**

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Capacity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CAISO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

As used in this Section 6.1, "commercially reasonable actions" or "good faith" shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller's Represents, Warrants and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the

failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

9. Collateral Requirements [NOTE to respondents: Amount to be determined by SDG&E credit department]

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Buyer's damages. Seller shall return to Buyer any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Buyer arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEI Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller's Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

a _____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED as to legal form _____

APPENDIX A

Unit Information

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

LETTER OF CREDIT FORM

IRREVOCABLE STANDBY

LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$ _____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation in compliance on or prior to 5:00 p.m. New York time, on or prior to the Expiration Date, of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored except as described in the succeeding paragraph.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 ("UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 14(8) AND 36 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. MATTERS NOT COVERED BY THE UCP SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

AUTHORIZED SIGNATURE for Bank

By: _____

Title: _____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit

Reference Number: _____

The undersigned _____, an authorized representative of San Diego Gas & Electric Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Standby Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, for the following reason(s) [check applicable provision]:

[] A. An Event of Default, as defined in the [INSERT] Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing or an amount is due and unpaid to Beneficiary by Applicant.

[] B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND _____ /100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

DEMAND RESPONSE RESOURCE

PURCHASE AGREEMENT

between

[NAME OF SELLER]

and

SAN DIEGO GAS & ELECTRIC COMPANY

DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT
BETWEEN
***[SELLER]* AND SAN DIEGO GAS AND ELECTRIC**
COMPANY

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**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND *SAN DIEGO GAS AND ELECTRIC COMPANY***

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DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER]* AND *SAN DIEGO GAS AND ELECTRIC COMPANY

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**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND *SAN DIEGO GAS AND ELECTRIC COMPANY***

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DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[NAME OF SELLER]
AND
SAN DIEGO GAS & ELECTRIC COMPANY

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between **SAN DIEGO GAS & ELECTRIC COMPANY**, a California corporation (“Buyer”), and **[Aggregator or Demand Response Provider]**, a **[Seller’s business registration]** (“Seller”), as of the latest signature date hereof (“Execution Date”). Buyer and Seller are referred to herein individually as a “Party” and collectively as “Parties.” Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Exhibit A.

AGREEMENT

In consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE 1. TRANSACTION

1.1. Purchase and Sale of the Product

- (a) During the Delivery Period, Seller shall sell and deliver, and Buyer shall purchase and receive, the Product as indicated in Table 1.1(b) in the amount of the Monthly Contracted Quantity, as indicated in Exhibit E, subject to and in accordance with the terms and conditions of this Agreement. The Product shall be a Proxy Demand Resource (PDR).
- (b) The Product is:

Table 1.1(b)

Product Selected	Type of Product	Local Capacity Area (as applicable)
☐	Product A: System Capacity	Not applicable

Product Selected	Type of Product	Local Capacity Area (as applicable)
☐	Product B-1: Local Capacity with System Capacity	SDG&E
☐	Product B-2: Local Capacity with System Capacity	SDG&E
☐	Product C1: Flexible Capacity (Flexible Category 1) with System Capacity	Not applicable
☐	Product C2: Flexible Capacity (Flexible Category 2) with System Capacity	Not applicable
☐	Product C3: Flexible Capacity (Flexible Category 3) with System Capacity	Not applicable
☐	Product D1-1: Flexible Capacity (Flexible Category 1) with Local and System Capacity	SDG&E
☐	Product D3-1: Flexible Capacity (Flexible Category 3) with Local and System Capacity	SDG&E

(c) Seller to indicate whether the Product is:

_____ a Residential Customer Product; or

_____ not a Residential Customer Product

{SDG&E Comment: Seller to choose only one option which applies to all Product for this Agreement}

(d) If Seller has chosen to deliver Product that is not Residential Customer Product, its DRAM Resource may nevertheless include Residential Customers and Small Commercial Customers.

1.2. Term

The “Term” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Period.

1.3. Delivery Period

The “Delivery Period” shall commence on the later of (a) the first day of the first month that begins after seventy-five (75) calendar days following CPUC Approval, and (b) *[Date]*, and shall continue in full force and effect until *[Date]* *{SDG&E Comment: The Date should be the last calendar day of the last Showing Month}*, unless terminated earlier in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Delivery Period will not commence until CPUC Approval is obtained or waived by Buyer in its sole discretion. *{SDG&E Comment: Dates will be based on Seller’s bid that was selected by SDG&E in the RFO. Currently that would be no earlier than [month, year] and no later than [month, year].}*

1.4. Seller’s Designation of the DRAM Resource

- (a) On or before the date that is seventy-five (75) calendar days prior to the first Showing Month, and on a monthly basis thereafter no less than seventy-five (75) calendar days prior to the applicable Showing Month if any of the information below changes, Seller shall:
 - (i) Provide to Buyer the Resource ID(s) for each PDR providing the Product pursuant to this Agreement.
 - (ii) Confirm in writing to Buyer that each PDR identified by Seller pursuant to Section 1.4(a)(i) is comprised solely of Bundled Service Customers, comprised solely of Unbundled Service Customers, or comprised of a mixture of Bundled and Unbundled Service Customers.
 - (iii) If the Product pursuant to this Agreement is a Joint Resource, Seller shall confirm in writing to Buyer (x) the amount of the capacity of such Joint Resource that will be used to show Demonstrated Capacity under this Agreement and (y) the total capacity of such Joint Resource.
- (b) Sellers shall sell and deliver System Capacity, Local Capacity, and/or Flexible Capacity from PDRs, as designated in Section 1.1(b).
- (c) The Parties shall cooperate to implement the requirements of Rule 24 to enroll Resource Customers in order for Seller to designate the PDR(s) pursuant Section 1.4(a)(i).

1.5. Monthly Contracted Quantity and Corresponding Contract Price

- (a) The Monthly Contracted Quantity and Contract Price for the type of Product indicated in Table 1.1(b) for each applicable Showing Month during the Delivery Period is set forth in Exhibit E.
- (b) In the event that Seller is not able to register the DRAM Resource for part or all of a Monthly Contracted Quantity for a Showing Month due solely to (i) the actions or inactions of Buyer or the CAISO, or (ii) insufficient Rule 24 registrations under D.16-06-008 Ordering Paragraph 6, then Seller may, in its sole discretion, by providing Notice to Buyer on or before the date that is sixty (60) calendar days prior to the Showing Month for which Seller is unable to register the DRAM Resource, reduce the Monthly Contracted Quantity for the unregistered capacity by type of Product for such Showing Month; *provided*, Seller shall demonstrate to Buyer's reasonable satisfaction that Seller made commercially reasonable efforts to register the DRAM Resource corresponding to such reduced Monthly Contracted Quantity for the unregistered capacity by type of Product in the applicable Showing Month.
- (c) In the event that material changes to definition of Resource Adequacy, including but not limited to changes in the Resource Adequacy Availability Assessment Hours, are adopted during the Term of this Agreement, then Seller may, in its sole discretion, by providing Notice to Buyer on or before **[month, year]** either (i) reduce the Monthly Contracted Quantity for the following year or (ii) terminate this Agreement.
- (d) Seller's exercise of its rights under Sections 1.5(b) or (c) will not be deemed to be a failure of Seller's obligation to sell or deliver the Product or a failure of Buyer's obligation to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to Seller's exercise of its rights under Section 1.5(c).

1.6. Demonstrated Capacity

- (a) Each invoice submitted by Seller to Buyer pursuant to Section 4.2 shall include a statement, in a form substantially similar to Exhibit C, of the amount of the Qualifying Capacity for each type of Product for such Showing Month that Seller was capable of delivering ("Demonstrated Capacity"), utilizing the results from one of the following methods, as provided below (subject to the additional restrictions set forth in Section 1.6(b)):
 - (i) The results of a DC Dispatch of the applicable PDR in the DRAM Resource during such Showing Month. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline; provided

that, for the Showing Month of August, the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline. If the CAISO issues a dispatch instruction for less than one hundred percent (100%) of the Qualifying Capacity of the applicable PDR in the DRAM Resource (a “Partial DC Dispatch”), then Seller may elect to submit the results of such Partial DC Dispatch during such Showing Month for its Demonstrated Capacity showing. Upon such election, the load reduction resulting from such Partial DC Dispatch shall be compared to the Qualifying Capacity of the entire PDR for purposes of deriving the DC-QC Ratio of the DRAM Resource in accordance with Section 4.1.

- (ii) The results of a DC Test in the event that (A) there is no DC Dispatch of the PDR in the DRAM Resource for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, and (B) Seller does not submit the results of a Partial DC Dispatch during the Showing Month as contemplated under 1.6(a)(i) above. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction during any hour of such DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any hour of such DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline.
 - (iii) In the event that (A) there is no DC Dispatch of the PDR in the DRAM Resource during the Showing Month for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, (B) Seller does not submit the results of a Partial DC Dispatch as contemplated under 1.6(a)(i) above, and (C) there is no DC Test of the PDR in the DRAM Resource during the Showing Month as contemplated under 1.6(a)(ii) above, the Demonstrated Capacity will equal the average amount of capacity for such PDR in the DRAM Resource that the Seller bid into the applicable CAISO Markets solely during the Availability Assessment Hours of the Showing Month in compliance with the CAISO MOO.
- (b) Seller’s use of the methods described in Sections 1.6(a)(i)-(iii) is subject to the following additional restrictions:

- (i) Demonstrated Capacity for each PDR in the DRAM Resource must be calculated under Section 1.6(a)(i) or 1.6(a)(ii) for the August Showing Month of each year and for at least fifty percent (50%) of all contracted Showing Months during the Delivery Period (rounded downward if the Delivery Period is an odd number of Showing Months). For example, if the Delivery Period consists of seven (7) Showing Months, then a DC Test or DC Dispatch shall be required for at least three (3) of such Showing Months, including the Showing Month of August.
 - (ii) Demonstrated Capacity for any PDR in the DRAM Resource shall not be calculated under Section 1.6(a)(iii) for more than five (5) consecutive Showing Months during the Delivery Period (prorated, if the Delivery Period is less than twelve (12) Showing Months, to a number equal to half of the Showing Months in the Delivery Period minus one: e.g., two consecutive Showing Months for a six-month Delivery Period).
- (c) The same Capacity Baseline must be used (i) to estimate Qualifying Capacity for Seller's month-ahead submissions pursuant to Section 3.1(a) for a Showing Month; (ii) to calculate Demonstrated Capacity for the applicable Showing Month; and (iii) for energy settlement at the CAISO for the applicable Showing Month.
- (d) Solely for purposes of establishing the Demonstrated Capacity pursuant to Section 1.6(a), Seller shall use data available through Buyer's Customer Data Access Systems that has been designated by Buyer as final Revenue Quality Meter Data and such data shall be considered final by the Parties as of the date Seller submits its invoice for the applicable Showing Month to Buyer.
- (e) If the DRAM Resource is composed of more than one PDR, then:
 - (i) Seller may establish the portion of the Demonstrated Capacity for each such PDR by using the methods described in Sections 1.6(a)(i) through (iii), in which case the Demonstrated Capacity will equal the sum of the individual PDRs' Demonstrated Capacities.
 - (ii) The Showing Months in which DC Dispatches or DC Tests are conducted may be different for each such PDR except for the Showing Month of August, in which a DC Dispatch or DC Test is required for every PDR in the DRAM Resource pursuant to Section 1.6(b)(i).
- (f) With respect to any DRAM Resource Customer service account that was moved in a Showing Month pursuant to Section 3.4(d), Seller shall include the performance of such DRAM Resource Customer service account only in one PDR for purposes of the calculation of Demonstrated Capacity for such Showing Month.
- (g) If any respective PDR in the DRAM Resource is a Joint Resource, Seller's invoice shall indicate (i) the amount of the capacity of such Joint Resource used to

show Demonstrated Capacity for a specific type of Product for such Showing Month and (ii) the total capacity of such Joint Resource during such Showing Month.

- (h) If the type of Product Seller delivers under this Agreement is a Residential Customer Product, Seller's invoice shall indicate the number of Residential Customer SAID agreements and the number of Small Commercial SAID accounts in each PDR for such type of Product.
- (i) In addition to the requirements in Section 1.6(a), if Seller is electing Demonstrated Capacity for Local Capacity, then, as part of Seller's Demonstrated Capacity for Local Capacity, Seller's invoice shall indicate the number of SAID agreements in the applicable LCA that are associated with the Local Capacity as indicated in Table 1.1(b) and Exhibit C.
- (j) Following Buyer's receipt of Seller's invoice and Notice of Demonstrated Capacity, Buyer may, upon Notice to Seller, require Seller to provide documentation from Seller or Seller's SC that establishes to Buyer's reasonable satisfaction the Demonstrated Capacity of each Product type from a PDR or Joint Resource as stated by Seller in its invoice for the applicable Showing Month. In the event that Seller does not provide such documentation within ten (10) Business Days from Buyer's Notice or such documentation is not reasonably satisfactory to Buyer, then Buyer may require an audit of Seller or Seller's SC records upon Notice ("Audit Notice"). With respect to an Audit Notice, Seller shall cause its SC to allow Buyer or its designated independent third-party auditor to have access to the records and data necessary to conduct such audit within five (5) Business Days of Seller's receipt of an Audit Notice; *provided*, such audit will be limited solely to verification of the data upon which Seller based its claim of the amount of the Demonstrated Capacity. If the type of Product designated in Section 1.1(b) is a Residential Customer Product, then, in addition to the documentation specified above, Buyer may, in its Audit Notice, require Seller or Seller's SC to provide additional documentation that establishes to Buyer's reasonable satisfaction that the type of Product is Residential Customer Product as stated by Seller in its invoice for the applicable Showing Month. Buyer's costs, including the costs for any third-party auditor, incurred in connection with the conducting such audit are the sole responsibility of Buyer.

ARTICLE 2. CPUC APPROVAL

2.1. Obtaining CPUC Approval

Within thirty (30) calendar days after the Execution Date, Buyer shall file with the Commission the appropriate request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in preparing for and obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a Commission decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

2.2. CPUC Approval Termination Right

- (a) Either Party has the right to terminate this Agreement upon Notice, which will be effective five (5) Business Days after such Notice is given, if (i) CPUC Approval has not been obtained or waived by Buyer in its sole discretion within sixty (60) calendar days after Buyer files its request for CPUC Approval and (ii) such Notice of termination is given on or before the ninetieth (90th) day after Buyer files the request for CPUC Approval.
- (b) Failure to obtain CPUC Approval in accordance with this Article 2 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party, and neither Party shall have any obligation or liability to the other, upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 3. SELLER OBLIGATIONS

3.1. Delivery of Product

- (a) No later than the deadlines set forth in subsections (i) and (ii) below, Seller shall submit, or cause Seller's SC(s) to submit:
 - (i) No later than fifteen (15) calendar days prior to Buyer's Compliance Showing deadlines each year or Showing Month (as applicable), Notice to Buyer which shall include Seller's Supply Plan for such year or Showing Month (as applicable) in (A) a form substantially similar to Exhibit D, or (B) a form as communicated in writing by Buyer to Seller no later than fifteen (15) Business Days prior to Buyer's Compliance Showing deadlines for such year or Showing Month (as applicable). Such Supply Plan shall include the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), the sum of which shall not exceed the Monthly Contracted Quantity.
 - (ii) No later than ten (10) Business Days prior to the deadline for Seller's Supply Plan submission in subsection (i) immediately above, the additional information required by the implementation guidelines set forth in D.19-07-009, Appendix A, attached hereto as Exhibit F (the "QC Implementation Guidelines"), including the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), presented in the standardized reporting format developed by the CPUC pursuant to Ordering Paragraph 8 of D.19-07-009.
- (b) Seller shall, on a timely basis, submit, or cause its SC to submit, a Supply Plan to CAISO in accordance with the CAISO Tariff. The quantities in the Supply Plan that is submitted to the Buyer under Section 3.1(a)(i) shall exactly match what is

submitted by the Seller or its SC to the CAISO due on the earliest monthly applicable Buyer's Compliance Showing deadlines with CAISO and CPUC.

3.2. Resource Adequacy Benefits

Seller grants, pledges, assigns, and otherwise commits to Buyer the Qualifying Capacity for each PDR specified in the Supply Plan and all Resource Adequacy Benefits of the Product as associated with the DRAM Resource to enable Buyer to meet its RAR, Local RAR and/or Flexible RAR, as applicable. The Parties shall take all commercially reasonable actions, and execute all documents or instruments necessary, to effect the use of the Product for Buyer's sole benefit.

3.3. Provision of Information

Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC all information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the DRAM to which this Agreement relates. In responding to any information request from the CPUC, the Seller may designate information for confidential treatment consistent with CAISO and/or Commission rule, tariff or decision. Any such confidential information provided by Seller to the CPUC shall be held in confidence by the CPUC and excluded from public inspection or disclosure, unless inspection or disclosure is otherwise required by Applicable Laws.

3.4. Seller's Obligations

- (a) Seller shall, and shall cause each of the PDRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff.
- (b) Seller shall or shall cause Seller's DRP to execute Buyer's Demand Response Provider Service Agreement in accordance with Rule 24.
- (c) Seller shall not include any Customer premises or resource in a PDR in the DRAM Resource that is concurrently enrolled in or otherwise concurrently committed to any other demand response program offered, maintained, or funded by Buyer (e.g., without limitation, behind-the-meter storage products in the Energy Storage RFO), or that is registered with CAISO as a part of any other demand response resource or Distributed Energy Resource Aggregation, other than as provided under this Agreement.
- (d) Seller shall not change or modify the customer composition of the DRAM Resource, including without limitation moving a DRAM Resource Customer service account in or out of any PDR of the DRAM Resource, during any Showing Month except under the following circumstances:

- (i) Seller may add a newly recruited service account to a PDR in the DRAM Resource if that service account is not part of a PDR that is already included in a Supply Plan submitted by Seller to Buyer or any other LSE for the same Showing Month.
- (ii) Seller may remove a service account from a PDR in the DRAM Resource.
- (iii) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes large enough to trigger the CAISO's above 10 MW telemetry requirement, Seller may split the affected PDR into two or more smaller resources as necessary to comply with CAISO requirements.
- (iv) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes small enough to drop below the 100 kW minimum PDR size requirement, Seller may combine the affected PDR with other resources as necessary to comply with CAISO requirements.
- (v) If a service account has moved to a new LSE (e.g., to or from a community choice aggregator), and if the CAISO Tariff requires PDRs to consist of service accounts that are customers of the same LSE, then Seller may add or remove the affected service accounts as necessary to comply with CAISO requirements.

3.5. Indemnities for Failure to Perform.

Seller agrees to indemnify, defend and hold harmless Buyer from any costs, penalties, fines or charges assessed against Buyer by the CPUC, CAISO, FERC, or any other Governmental Body with jurisdiction over Buyer, resulting from Seller's failure to do, or cause to be done, any of the following:

- (a) Provide all of the Monthly Contracted Quantity in any Showing Month, except to the extent (i) such failure is solely the result of a failure by Buyer to perform any of its obligations pursuant to Section 6.2, or (ii) Seller reduces the Monthly Contracted Quantity in accordance with Section 1.5(b) or (c);
- (b) Submit timely and accurate Supply Plans that identify Buyer's right to the Monthly Contracted Quantity for each Showing Month;
- (c) Comply with the requirements in Section 3.2 to enable Buyer to meet its RAR;
- (d) Meet CPUC Resource Adequacy requirements per the CPUC RA Filing Guide; or
- (e) Comply with the CAISO Tariff.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such costs, penalties, fines and charges; *provided*, in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions

to minimize these costs, penalties, fines and charges. If Seller fails to pay the foregoing penalties, fines, charges, or costs, or fails to reimburse Buyer for those penalties, fines, charges, or costs, then Buyer may offset those penalties, fines, charges or costs against any amounts it may owe to Seller under this Agreement.

Notwithstanding Seller's obligations in Section 3.5(a), Seller is not required to indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

ARTICLE 4. PAYMENT AND BILLING

4.1. Delivered Capacity Payment

Buyer shall make a monthly payment to Seller, after the applicable Showing Month, ("Delivered Capacity Payment") equal to the product of (A x B x C).

$$\text{Delivered Capacity Payment} = [A \times B \times C]$$

Where:

A = The Contract Price for the applicable Showing Month, including SC costs.

B = The value from the chart below corresponding to the applicable ratio of Demonstrated Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) as a percentage of the Qualifying Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) ("DC-QC Ratio"):

Delivered Capacity (DC) Payment Values		
Band	DC- QC Ratio	Value for B
Tolerance	> 90.00%	Qualifying Capacity (kW)
Pro-rated	> 70.00% to 90.00%	Demonstrated Capacity (kW)
De-rated	50.00% to 70.00%	Demonstrated Capacity (kW) * 75%
Forfeiture	< 50.00%	0

C = 1.0 if Seller has chosen (i) not to deliver Residential Customer Product in Section 1.1(c) or (ii) to deliver Residential Customer Product in Section 1.1(c) and the Product delivered meets the definition of Residential Customer Product, or 0.90 if the Product delivered does not meet the definition of Residential Customer Product.

4.2. Invoice and Payment Process

- (a) Within thirty (30) calendar days after Seller has received Revenue Quality Meter Data for at least ninety-five percent (95%) of all intervals required for settlement of the DRAM Resource for the applicable Showing Month, Seller will render to Buyer an invoice for the Demonstrated Capacity and associated payment amount due, if any, with respect to such Showing Month. Seller's failure to render any invoice on or before the deadline set forth herein shall be deemed to be a submission by the Seller of a DC Dispatch-based invoice with Demonstrated Capacity at an amount below fifty percent (50%) of the Qualifying Capacity for the applicable Showing Month (i.e., within the "forfeiture" payment band in the chart in Section 4.1).
- (b) Buyer will pay Seller all undisputed invoice amounts on or before the later of (i) the twentieth (20th) day of each month, or (ii) the tenth (10th) day after receipt of Seller's invoice and Demonstrated Capacity or, if such day is not a Business Day, then on the next Business Day.
- (c) Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Cash Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.
- (d) Buyer may offset against any future payments by any amount(s) that were previously overpaid.
- (e) Either Party may, in good faith, dispute the correctness of any invoice, bill, charge, or any adjustment to an invoice, rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, bill, charge, or adjustment to an invoice, was rendered. Disputes are subject to the provisions of Article 10 below. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution.

- (f) Buyer may deduct any amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer under this Agreement.
- (g) With respect to any Joint Resource, if Seller and any third party both submit claims to Buyer for payment with respect to such Joint Resource which, when added together, exceed the total capacity of the Joint Resource, Buyer shall not be obligated to make payment to Seller in respect of such Joint Resource until Seller reconciles the error with such third party and Seller re-submits the corrected invoice to Buyer.
- (h) With respect to a Joint Resource, if such Joint Resource's Demonstrated Capacity for a particular type of Product in any Showing Month is less than such Joint Resource's QC for such type of Product (as set forth in Exhibit C), Seller shall have the right to demonstrate to Buyer the Joint Resource's actual performance, and shall be compensated in accordance with Section 1.6. In the event Buyer finds Seller's demonstration inconclusive, the Joint Resource's total capacity shall be allocated pro-rata among the parties with rights to a portion of such Joint Resource's type of Product based on the information required to be provided in Section 1.6(g), and Seller's compensation shall be calculated using its percentage allocation of such PDR's capacity, accordingly.

4.3. Allocation of Other CAISO Payments and Costs

As between Buyer and Seller, Seller shall retain any revenues Seller or Seller's SC may receive from and pay all costs, penalties, charges charged to Seller or Seller's SC by the CAISO or any other third party in connection with the DRAM Resource, except as expressly provided otherwise in this Agreement.

ARTICLE 5. CREDIT AND COLLATERAL *[NOTE TO BIDDERS: COLLATERAL POSTING MAY BE REQUIRED.]*

5.1. Seller's Credit and Collateral Requirements

- (a) If, at any time during the Term Seller does not have a Credit Rating, or if its Credit Rating is below BBB- from S&P or Baa3 from Moody's, if rated by both S&P and Moody's or below BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall provide and maintain collateral with Buyer in an amount equal to twenty percent (20%) of the sum of the estimated Delivered Capacity Payments for all of the remaining months of the Delivery Period including the current month, with such estimated Delivered Capacity Payments being based on the applicable Monthly Quantity values times the applicable Contract Price ("Performance Assurance").
- (b) If Seller's Credit Rating is at or above BBB- from S&P and Baa3 from Moody's, if rated by both S&P and Moody's, or at or above BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall have no

obligation to provide Performance Assurance to Buyer, and Sections 5.2 through 5.5 will not be applicable.

- (c) If required pursuant to Section 5.1(a), Seller shall post the Performance Assurance with Buyer within ten (10) Business Days of the Execution Date.

5.2. Grant of Security Interest/Remedies

- (a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, the Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, if it is the Non-Defaulting Party, may do any one or more of the following: (i) exercise any of the rights and remedies of a Buyer with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. In such an event Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

5.3. Reduction and Substitution of Performance Assurance

- (a) If the amount of Performance Assurance held by Buyer exceeds the amount required pursuant to Section 5.1, on any Business Day, Seller may give Notice to Buyer requesting a reduction in the amount of Performance Assurance previously provided by Seller for the benefit of Buyer, provided that, (i) after giving effect to the requested reduction in Performance Assurance, no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, (ii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, and (iii) no amounts are owing and unpaid from Seller to Buyer hereunder. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to Seller or the reduction of the amount of an

outstanding Letter of Credit previously issued for the benefit of Buyer. Seller shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of Buyer) shall be borne by Seller. Unless otherwise agreed in writing by the Parties, if Seller's reduction demand is made on or before the Notification Time on a Business Day, then Buyer shall have five (5) Business Days to effect a permitted reduction in Performance Assurance, and if Seller's reduction demand is made after the Notification Time on a Business Day, then Buyer shall have six (6) Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to Seller. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of Buyer, Buyer shall promptly take such action as is reasonably necessary to effectuate such reduction.

- (b) Except when an Event of Default or Potential Event of Default with respect to Seller shall have occurred and be continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, Seller may substitute Performance Assurance for other existing Performance Assurance of equal value upon five (5) Business Days' Notice (provided such Notice is made on or before the Notification Time, otherwise the notification period shall be six (6) Business Days) to Buyer. Upon the Transfer to Buyer of the substitute Performance Assurance, Buyer shall Transfer the relevant replaced Performance Assurance to Seller within five (5) Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to Buyer prior to the release of the Performance Assurance to be returned to Seller and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of Buyer shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the substitute Performance Assurance shall equal the amount of Performance Assurance being replaced. Each substitution of Performance Assurance shall constitute a representation and warranty by Seller that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Article 5, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of Buyer pursuant to this Article 5.
- (c) The Transfer of any Performance Assurance by Buyer in accordance with this Section 5.3 shall be deemed a release by Buyer of its security interest, general first lien and right of offset granted pursuant to this Article 5 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Article 5, Seller will,

upon request of Buyer, execute a receipt showing the Performance Assurance Transferred to it.

5.4. Administration of Performance Assurance

- (a) Cash. Performance Assurance provided in the form of Cash to Buyer shall be subject to the following provisions:
 - (i) Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to Buyer and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations, then Buyer shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.
 - (ii) So long as no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to Seller, and no amounts are owing and unpaid from Seller to Buyer hereunder, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that Buyer is holding Cash, Buyer will Transfer (or caused to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by Buyer), the Interest Amount when Buyer returns the Cash to Seller following the termination or expiration of this Agreement, as applicable and in conformity with Section 9.6. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to Seller or an Early Termination Date as a result of an Event of Default with respect to Seller, Buyer shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.
- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:
 - (i) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or Cash, in each case at least thirty (30) calendar

days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank or financial institution issuing a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of Buyer either a substitute Letter of Credit that is issued by a bank or financial institution acceptable to Buyer or Cash, in each case within one (1) Business Day after such refusal.

- (ii) As one method of providing Performance Assurance, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
 - (iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).
 - (iv) Upon or at any time after the occurrence and continuation of an Event of Default or Letter of Credit Default with respect to Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank or financial institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default, Letter of Credit Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 5.5 with respect to such Cash proceeds. Notwithstanding Buyer's receipt of Cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to Transfer sufficient Performance Assurance and (B) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.
 - (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Care of Performance Assurance. Except as otherwise provided in Section 5.4(a)(i) and beyond the exercise of reasonable care in the custody thereof, Buyer shall have no duty as to any Performance Assurance in its possession or control or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. Buyer shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or

responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is the result of Buyer's willful misconduct or gross negligence. Buyer shall at all times retain possession or control of any Performance Assurance Transferred to it.

5.5. Exercise of Rights against Performance Assurance

- (a) If an Event of Default with respect to Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller, Buyer may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under Applicable Law. Without limiting the foregoing, if at any time an Event of Default with respect to Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to Seller, then Buyer may, in its sole discretion, exercise any one or more of the following rights and remedies:
 - (i) All rights and remedies available to a Buyer under the Uniform Commercial Code and any other applicable jurisdiction and other Applicable Laws with respect to the Performance Assurance held by or for the benefit of Buyer;
 - (ii) The right to set off any Performance Assurance held by or for the benefit of Buyer against and in satisfaction of any amount payable by Seller in respect of any of its obligations; and
 - (iii) The right to draw on any outstanding Letter of Credit issued for its benefit.
- (b) Buyer shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. Seller shall in all events remain liable to Buyer for any amount payable by Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

5.6. Financial Information

If requested by a Party, the other Party shall deliver, if available, (a) within one hundred twenty (120) calendar days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year setting forth in each case in comparative form the figures for the previous year for the Party, as the case may be, and (b) within sixty (60) calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and

Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year end audit adjustments); provided, for the purposes of this Section 5.6, if a Party's financial statements are publicly available electronically on the Securities and Exchange Commission's website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

5.7. Access to Financial Information

- (a) If Buyer shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, that Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Financial Consolidation Requirement is applicable, then:
 - (i) Within twenty (20) calendar days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.
 - (ii) Within fifteen (15) calendar days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period. The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller

a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance with GAAP, IFRS, or Successor, the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.
- (c) If the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer. If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 5.7(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within ninety (90) calendar days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; provided, Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.
- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 5.7 in strict confidence and, accordingly:
 - (i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial

statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those persons who are entitled to receive confidential information as identified in Article 13; and

- (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (A) treat as confidential any information disclosed to them by Buyer pursuant to this Section 5.7, (B) use such information solely for purposes of conducting the audits described in this Section 5.7, and (C) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Financial Consolidation Requirement is applicable, then, within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 5.7(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 9.1. If the independent audit firm associated with Buyer still determines, after review by the third-party independent audit firm, that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; provided, in addition to the protections in Article 13, such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

5.8. Uniform Commercial Code Waiver

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, those provisions set forth in Article 5 and Article 9, neither Party:

- (a) has or will have any obligation to post margin, provide Letters of Credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 5 and Article 9; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE 6. SPECIAL TERMS AND CONDITIONS

6.1. Limitation of Liability

Buyer has no obligations to any person or entity that is, or may participate as, a DRAM Resource Customer, DRP (if Seller is not a DRP), or Seller's SC and Seller shall indemnify Buyer against any claim made by any such DRAM Customer, the DRP (if Seller is not a DRP), or Seller's SC with respect to its participation in or with the PDR or DRAM Resource, as applicable.

6.2. Buyer Provision of Information

Buyer shall provide to Seller, to the extent available and permitted by Applicable Law, including Rule 24, provide specific information consistent with the Customer Information Service Request Form for Demand Response Providers (CISR-DRP) adopted by the CPUC in D.13-12-029 and Resolution E-4630 including, but not limited to, usage, and/or meter data of a Customer, if Seller provides to Buyer written authorization from such Customer to release such information. Such written authorization must be provided in a form reasonably acceptable to Buyer. Buyer shall be liable for penalties or charges incurred by Seller from either the CAISO or the CPUC resulting solely from Buyer's failure to provide timely, accurate data to Seller in accordance with this Section 6.2.

6.3. Changes in Applicable Laws

- (a) If a change in Applicable Laws renders this Agreement or any material terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed or administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Execution Date. The Parties acknowledge that such changes may require the approval of the CPUC before becoming effective.
- (b) If the Parties have been unable to reach agreement within thirty (30) calendar days after receipt of such Notice, then either Party may terminate this Agreement by providing Notice. A Party's exercise of its rights under this Section 6.3 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to a Party's exercise of its right pursuant to this Section 6.3.

6.4. DBE Reporting

No later than twenty (20) calendar days after each semi-annual period ending on June 30th or December 31st during the Term, Seller shall provide to Buyer a report listing all Diverse Business Enterprises that supplied goods or services to Seller during such period, including any certifications or other documentation of such Diverse Business Enterprises' status as such and the amount paid to each Diverse Business Enterprise during such period.

- a. Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.4.
- b. Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.4.

6.5. Governmental Charges

Seller shall pay on request and indemnify Buyer against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Agreement or the execution, delivery, performance or enforcement of this Agreement, as well as any penalties with respect thereto.

6.6. Customers in Buyer Automated Demand Response Program

Seller agrees to and acknowledges the following with respect to Buyer's non-Residential Customers which are included in Seller's DRAM Resource and have received ADR incentives or rebates to install demand response capable control technologies:

- (a) Customers in Seller's DRAM Resource are eligible for ADR incentives or rebates, subject to the requirements of this Agreement, Commission requirements, and Applicable Laws. The Customer remains responsible for fulfilling its obligations under Buyer's ADR program rules during the time period such ADR Customer is in Seller's DRAM Resource.
- (b) Seller shall be responsible for (i) notification to ADR Customers in its DRAM Resource of each Bid awarded by the CAISO ("Award") for a PDR, and (ii) operation of the ADR Customers' ADR control technology in response to an Award. During the time period that an ADR Customer is enrolled in a DRAM Resource, Buyer (or its agent) will not send notifications to such ADR Customer of Awards and will not operate ADR Customers' ADR control technology.
- (c) If Seller or its DRP enrolls a Customer who has received ADR incentives or rebates in Seller's DRAM Resource, Seller shall provide Buyer (or its agent) with Notice within five (5) Business Days of such enrollment of the ADR Customer's enrollment along with the ADR Customer's name, service account address, SAID,

location, the ADR agreement, and confirmation that the ADR Customer has unenrolled from all or any of Buyer's event-based demand response programs (other than ADR) prior to enrolling in Seller's DRAM Resource. Seller shall provide Buyer (or its agent) with Notice within fifteen (15) calendar days after such Customer leaves Seller's DRAM Resource.

- (d) Customers who have received ADR incentives within the past year who enroll in a DRAM Resource will be required to demonstrate performance through the DRAM Resource to qualify for additional ADR incentive payments as indicated in the statewide ADR Guidelines.
- (e) Buyer (or its agent) may communicate (i) with Seller's Customers who have received ADR incentives or rebates about the requirements for the Customer to participate in a demand response program, and (ii) with Seller's Customers with respect to anything involving their ADR incentive or rebate eligibility.
- (f) Seller shall provide to Buyer (or its agent) all information necessary for Buyer to administer the Customers' ADR incentives or rebates, including, but not limited to: (i) the information described in Section 6.6(c), (ii) the days in each Showing Month of Dispatch of the applicable PDR in the DRAM Resource, (iii) all hours in such Showing Month, corresponding to the days in subsection (ii), when Seller dispatched or called on the ADR Customer to respond to an Award, and (iv) information on ADR Customers that Seller did not dispatch or call on to respond to an Award for such Showing Month. The Customer's participation in the Seller's DRAM Resource as described in this Section 6.6(f) will be used in conjunction with the ADR Customer's participation in Buyer's demand response programs, to calculate the Customer's actual performance and subsequent incentive payments.
- (g) If Seller does not provide all the information Buyer needs to administer the ADR incentives for the Customer, the ADR Customer will be in non-compliance with the requirements of the ADR program.
- (h) Following the termination or expiration of this Agreement, Buyer (or its agent) may notify the Customers in Seller's DRAM Resource that have received ADR incentives or rebates of their commitment to participate in a demand response program for a total of three years.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1. Representations and Warranties of Both Parties

On the Execution Date, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (b) Except for CPUC Approval in the case of Buyer, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
- (e) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;
- (f) There is not pending or, to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) It (i) is acting for its own account, (ii) has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, (iii) is not relying upon the advice or recommendations of the other Party in so doing, and (iv) is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement; and
- (h) It has entered into this Agreement in connection with the conduct of its business and it has the capability or ability to make available or take delivery of, as applicable, the Product under this Agreement in accordance with the terms of this Agreement.

7.2. Additional Seller Representations, Warranties and Covenants

- (a) On the Execution Date, Seller represents and warrants to Buyer that Seller has not used, granted, pledged, assigned, or otherwise committed any of the Monthly Quantity to meet the RAR, Local RAR and/or Flexible RAR, as applicable, or confer Resource Adequacy Benefits upon, any entity other than Buyer during the Delivery Period.
- (b) Seller covenants that throughout the Delivery Period:
 - (i) Seller will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;

- (ii) Seller has been authorized by each Customer, to act as an aggregator on behalf of such Customer to participate as a PDR in the DRAM Resource, if Seller is not also a Customer;
- (iii) The DRP has been authorized by each Customer to act on behalf of such Customer to participate as a PDR for the DRAM Resource, if Seller is not the DRP; and
- (iv) Seller will not use, grant, pledge, assign, or otherwise commit any Monthly Contracted Quantity to meet the RAR, Local RAR, and/or Flexible RAR, as applicable, or confer Resource Adequacy Benefits of the Product upon, any entity other than Buyer during the Delivery Period;
- (v) During each month of the Delivery Period, if any participating Customers in the DRAM Resource have a Prohibited Resource, Seller shall ensure that such Prohibited Resource is not used to reduce load during a Dispatch by any PDR providing Product to Buyer during such month, as follows:
 - A. For all Residential Customers, Seller shall include a provision in its contract forbidding the use of Prohibited Resources to reduce load during a Dispatch by any PDR providing Product to Buyer. Any Customer that does not accept the prohibition will not be eligible to participate in the Seller's DRAM Resource.
 - B. Seller shall require from each of its non-Residential Customers an attestation form attesting to one of the following conditions:
 - 1. the Customer does not have a Prohibited Resource on site;
 - 2. the Customer has a Prohibited Resource on site and will not use the resource to reduce load during a Dispatch by any PDR providing Product to Buyer; or,
 - 3. the Customer has a Prohibited Resource on site and may have to use the resource during Demand Response events for operational, health or safety reasons. The total nameplate capacity in kW of the Customer's resource(s) will be used as the Default Adjustment Value (DAV) to adjust the Demand Response incentives / charge for the Customer's account.

For condition 1 above, the Customer's attestation must include the service account number. For conditions 2 and 3 above, each attestation must provide the service account number, the number of unit(s) of Prohibited Resources on site, and the nameplate capacity of the Prohibited Resource (or, if the Customer has multiple Prohibited Resources, the sum of the nameplate capacity values from all Prohibited Resources on site) (the "Default Adjustment Value"). For condition (3), this Default Adjustment Value will be subtracted from

the Potential Load Reduction or Nominated Capacity. Customers must agree to a default adjustment in which the amount of Product such Customer can provide is reduced by the Default Adjustment Value, regardless of whether the Prohibited Resource was actually used. Customers with multiple service accounts enrolled through Seller may submit one attestation form per attestation scenario.

- C. Seller shall collect and store all such Customer attestations and make them available upon request, to a Verification Administrator or the CPUC. Seller shall also collect and store supporting documentation, such as nameplate capacities for each resource under each attestation scenario, and make them available upon request to Buyer, the Verification Administrator or the CPUC.
- D. For non-Residential Customers, the attestation shall occur at the time of enrollment and may be provided with a wet signature, a click, or an electronic signature. Any non-Residential Customer that does not complete this component of the enrollment process will not be eligible to participate in Seller's DRAM Resource. Consistent with CPUC Resolution E-4906, the Seller's contractual agreement is contingent upon compliance with both the prohibition and the submission of the Customers' attestations, which are subject to verification.
- E. Seller shall include provisions in its contracts that Customers are subject to random annual audits (1) requiring compliance with verification requests and facility access for site visits as deemed necessary by the Verification Administrator; (2) requiring the Customer to provide the Verification Administrator with written operating manifest(s), date and time stamped photo(s) of the Prohibited Resource unit(s), load curtailment plan(s), single line diagram(s) permit copy(ies), or other information or documentation about their onsite Prohibited Resources; and (3) allowing the Buyer or its contractor(s) to install monitoring equipment at the Sites for the purposes of verification of attestations.
- F. Seller shall include additional and separate provisions near the beginning of its contracts with Customers explaining and implementing these restrictions specifying that Customer compliance will be subject to verification, indicating the consequences for noncompliance with the provision. All contracts with non-Residential Customers shall indicate that the non-compliance consequences will be as set forth in this section. If the instance of non-compliance involves clerical or administrative errors, such as an inaccurate listing of a Customer name or the nameplate value of a Prohibited Resource in an attestation, or a failure to include a Customer's Prohibited Resource on an attestation, provided in all cases that such Prohibited Resource is not used in violation of the terms of this Agreement (collectively,

“Type One Non-Compliance”), Seller shall specify that Customers will have sixty (60) calendar days from receipt of notice to cure such Type-One Non-Compliance. If the instance of non-compliance involves either (1) the Customer does not attest to the use of any Prohibited Resource but is using a Prohibited Resource to reduce load during a demand response event; or (2), a Customer submits an invalid nameplate capacity value for the Prohibited Resource(s) that is lower than the actual capacity value on the nameplate (collectively “Type Two Non-Compliance”), then Customer will be removed from Seller’s DRAM Resource as follows. If there is an instance of (x) an uncured Type One Non-Compliance, or (y) a Type Two Non-Compliance, the consequences will be removal from Seller’s DRAM Resource and ineligibility to enroll in any DRAM Seller’s Resource or Buyer’s demand response program subject to the prohibited resource requirement in D.16-09-056 for twelve calendar months from the removal date (for a single instance of noncompliance), or three years from the removal date (for two or more instances of noncompliance).

- G. Seller shall provide such documentation as may be reasonably necessary for Buyer to verify the accuracy of the attestations referenced in subsections B(1)–(3) above and Seller’s compliance with and enforcement of this Section 7.2(b)(v). For all non-Residential Customers, (1) Sellers will provide the Default Adjustment Values (DAVs) monthly (with Demonstrated Capacity information); and, (2) Sellers will ensure that CAISO wholesale market bids reflect portfolio amounts prior to de-rating. Seller shall comply with any Prohibited Resource audit verification plan that is developed in accordance with D. 16-09-056 and approved by the CPUC.
- H. On an annual basis, Seller shall provide to Buyer the language on the prohibition included in its respective Residential Customer contracts. Seller will develop metrics, targets and record keeping systems to assess the effectiveness of its Customer outreach and notification efforts required under this Section 7.2(b)(v), and will provide such materials to the Buyer, the CPUC, and the Verification Administrator upon the request of Buyer or the CPUC.
- I. Seller shall include provisions in its contracts with non-Residential Customers permitting updates to their attestations to (1) add, remove or modify an on-site Prohibited Resource; (2) change the status or use of a Prohibited Resource to reduce load during any Dispatch; or (3) change the Default Adjustment Value, but only if, in each case, the change is supported by documentation that confirms the operational change and can be verified by a Verification Administrator.

- J. Verification methods for Customers under the condition noted in Section 7.2(b)(v)(I)(3) above shall be based on documentation of nameplate capacity, instead of load curtailment plans..
 - K. If further documentation in the form of load curtailment plans are required, Seller shall comply with the Verification Administrator's requests for supporting materials.
 - L. The Buyer has been directed by the CPUC to require a standardized non-disclosure agreement (NDA) that the Verification Administrator executes with the Buyer. This NDA pertains to all sellers and their customers from whom they collect market-sensitive, proprietary data. Verification information obtained from sellers and their customers is only to be submitted to and collected by the Verification Administrator consistent with CPUC Resolution E-4906. Under the terms of this NDA, third party customers' market-sensitive, proprietary information shall not to be shared with the Buyer, will be kept under seal, and shall be made available to the Commission upon request. Per Ordering Paragraph 14 of CPUC Resolution E-4906, all aggregators must store Customer attestations and make them available to the CPUC upon request. The Seller shall store non-Residential Customer attestations and make them available to the Buyer or Commission upon request.
- (vi) If any respective PDR is a Joint Resource, Seller shall ensure that: (A) the use of the Joint Resource does not result in Buyer making payment in respect of Demonstrated Capacity for a type of Product in excess of the total capacity of the Joint Resource, whether to Seller or any other party, regardless of whether payment is made under this Agreement, another agreement in the DRAM, any other demand resource agreement or program, or any combination thereof; (B) the use of the Joint Resource does not result in Buyer making payment more than once in respect of capacity relating to a particular Customer registered in the Joint Resource, regardless of whether payment is made under this Agreement, another agreement in the DRAM, any other demand resource agreement or program, or any combination thereof; and (C) Seller has the right to access and provide to Buyer the records and data regarding any DRAM Resource Customer that is not designated by Seller under Section 1.6(g) as part of the amount to be used to show Demonstrated Capacity for a type of Product under this Agreement to permit Buyer to audit such Joint Resource under Section 1.6(j) to the same extent Buyer may audit PDRs that are not Joint Resources.

ARTICLE 8. NOTICES

8.1. Notices

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 8.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile. Notice from one Party to the other Party by e-mail or facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. A Party may change its contact information by providing Notice of the same in accordance herewith.

8.2. Contact Information

For Buyer:

Contract General Contact:

Street: 8315 Century Park Court
City: San Diego, CA Zip: 92123
Attn: Demand Response – DRAM –
Brad Mantz
Phone: 858) 654-1588
Email: BMantz@SDGE.com
Duns: 006911457
Federal Tax ID Number: 95-1184800

Supply Plan Contact:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Electric and Fuel Procurement – Joe Pasquito
Phone: (858) 650-6165
Email: JPasquito@SDGE.com

Other Buyer Contact Information

Payments:

San Diego Gas & Electric Company
PO Box 25110
Santa Ana, CA 92799-5110
Attn: Mail Payments
Phone: (619) 696-4521

Facsimile: (619) 696-4899

Wire Transfer:

BNK: Union Bank of California for: San Diego Gas & Electric Company

ABA: Routing #122000496

ACCT: #4430000352

Reference: SAP # 2130015

Confirmation: SDG&E, Major Markets

Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company, Major Markets

555 W. Fifth Street, ML 18A3

Los Angeles, CA 90013-1011

Attn.: Major Markets, Credit and Collections Manager

Fax No.: (213) 244-8316

Phone: (213) 244-4343

Notices of an Event of Default or Potential Event of Default:

San Diego Gas & Electric Company

8330 Century Park Ct.

San Diego, California 92123

Attn: General Counsel

Phone: (858) 650-6141

Facsimile: (858) 650-6106

For Seller:

Billing Representative

[Name]

Phone:

Facsimile:

Email:

Contract Representative

[Name]

Phone:

Facsimile:

Email:

Supply Plan Contact

[Name]

Phone:

Facsimile:

Email:

Other Seller Contact Information

ACH

BNK:

Credit and Collections

Attn:

ABA:

Phone:

ACCT:

Facsimile:

Email:

Notices of Event of Default or Potential Event of Default to:

[Name]

Phone:

Facsimile:

Email:

The Parties acknowledge and agree that those persons set forth in this Section 8.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION

9.1. Events of Default

An “Event of Default” shall mean, with respect to a Party (“Defaulting Party”), the occurrence of any of the following:

(a) With respect to either Party:

- (i) The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
- (ii) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
- (iii) The failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), where such breach is not remedied within five (5) Business Days of Notice of such breach by the Non-Defaulting Party.
- (iv) Such Party becomes Bankrupt; or
- (v) A Merger Event occurs with respect to such Party.

(b) With respect to Seller:

- (i) The failure of Seller to satisfy the collateral requirements set forth in Article 5;

- (ii) During the Term, Seller makes any material misrepresentation or omission in any report required to be made or furnished by Seller, the Seller's DRP or the Seller's SC pursuant to this Agreement;
- (iii) During the Delivery Period, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than Buyer without Buyer's written consent; or
- (iv) During the Term, the occurrence and continuation of a default, event of default or other similar condition or event (however described) in respect of Seller under one or more agreements or instruments relating to indebtedness for borrowed money (whether present or future, contingent or otherwise), which results in such indebtedness for borrowed money (whether present or future, contingent or otherwise) becoming, or becoming capable at such time of being declared, immediately due and payable under such agreements or instruments, before it would otherwise have been due and payable, or a default by Seller in making one or more payments on the due date thereof in an aggregate amount of not less than **[To be determined]** under such agreements or instruments (after giving effect to any applicable notice requirement or grace period).
- (v) During the Term, Seller fails to comply with the requirements of Section 7.2(b)(v), where such breach is not remedied within thirty (30) calendar days of Notice of such breach by Buyer.
- (vi) The aggregate Demonstrated Capacity for the DRAM Resource is less than fifty percent (50%) of the aggregate Qualifying Capacity for the DRAM Resource in any two (2) sequential Showing Months for which Demonstrated Capacity was calculated with reference to the results of a DC Dispatch pursuant to Section 1.6(a)(i) or a DC Test pursuant to Section 1.6(a)(ii) (excluding any intervening months with invoices based on MOO bids pursuant to Section 1.6(a)(iii)).

9.2. Early Termination

If an Event of Default shall have occurred, the Party taking the default (the "Non-Defaulting Party") has the right:

- (a) To designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) Withhold any payments due to the Defaulting Party under this Agreement;
- (c) Suspend performance of this Agreement, but excluding Seller's obligation to post and maintain Performance Assurance in accordance with Article 5; and

- (d) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

9.3. Termination Payment

- (a) As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the amount of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Settlement Amount, together with appropriate supporting documentation.
- (b) If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within two (2) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Settlement Amount shall be zero dollars (\$0), and the Non-Defaulting Party shall only pay to the Defaulting Party, within thirty (30) calendar days after the Notice is provided, any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.
- (c) If a Party disputes the other Party's calculation of the Termination Payment, in whole or in part, the disputing Party shall, within two (2) Business Days of receipt of the Party's calculation of the Termination Payment, provide to the other Party a detailed written explanation of the basis for such dispute. Any disputes as to the calculation of the Termination Payment which the Parties are unable to resolve may be submitted to dispute resolution as provided in Article 10.

9.4. Reserved

9.5. Suspension of Performance

Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

9.6. Rights and Obligations Surviving Termination or Expiration

The rights and obligations that are intended to survive a termination or expiration of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination or expiration and those that arise from a Party's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination or expiration of this Agreement, including:

- (a) A Party's obligation to provide information, including but not limited to Sections 3.3, 5.7, 6.2 and 6.4.

- (b) A Party's obligations with respect to invoices and payments pursuant to this Agreement;
- (c) The obligation of Seller to maintain Performance Assurance as set forth in Section 5.1;
- (d) The obligation of Buyer to return any Performance Assurance under Section 5.3;
- (e) The right to pursue remedies as set forth in Sections 9.2(d) and Article 10;
- (f) The obligations with respect to a Termination Payment as set forth in Section 9.3;
- (g) The dispute resolution provisions of Article 10;
- (h) The indemnity obligations expressly set forth in this Agreement;
- (i) The limitation of liabilities as set forth in Sections 3.5, 6.1 and Article 12; and
- (j) The obligation of confidentiality as set forth in Article 13.

ARTICLE 10. DISPUTE RESOLUTION

10.1. Dispute Resolution

Other than requests for provisional relief under Section 10.5, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 10.3 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 10.4 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 10 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article 10 with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

10.2. Negotiation

Except for disputes arising with respect to a Termination Payment, the Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Contract Representative, as identified in

Section 8.2, or such other person designated in writing as a representative of the Party ("Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies, who shall have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

Within five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) calendar days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet as often as they reasonably deem necessary to exchange the relevant information and to attempt to resolve the dispute.

All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to the first paragraph of this Section 10.2, refuses or will not meet within ten (10) Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 10.3.

If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within ten (10) Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute then either Party may refer the matter directly to Arbitration, as set forth in Section 10.4 below.

10.3. Mediation

Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; provided, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.4. Arbitration

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article 8 of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") if mediation pursuant to Section 10.3 above does not result in resolution of the dispute within sixty (60) calendar days after service of a written demand for mediation (as the same may be extended by mutual agreement of the Parties).

If Notice of arbitration is not provided by either Party within sixty (60) calendar days following the unsuccessful conclusion of the mediation provided for in Section 10.3 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in selecting the Arbitrator and scheduling the arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6.

To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for herein, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section

1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Diego County, California.

Also notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) calendar days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) calendar days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) calendar days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article 11, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Article 13.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

Within thirty (30) calendar days after the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator's decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees.

10.5. Provisional Relief

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Article 13 in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to this Article 10. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Article 10,

notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

ARTICLE 11. INDEMNIFICATION

11.1. Seller's Indemnification Obligations

- (a) In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 11.1, Seller releases, and shall indemnify, defend and hold harmless Buyer, and Buyer's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:
 - (i) any breach made by Seller of its representations, warranties and covenants in Article 7 or any payment disputes resulting from the use of a Joint Resource;
 - (ii) Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Article 3;
 - (iii) any violation of Applicable Law or the CAISO Tariff arising out of or in connection with Seller's performance of, or failure to perform this Agreement;
 - (iv) injury or death to persons, including Buyer employees, and physical damage to property, including Buyer property, where the damage arises out of, is related to, or is in connection with, Seller's obligations or performance under this Agreement.

This indemnity applies notwithstanding Buyer's active or passive negligence; *provided*, Buyer will not be indemnified for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

11.2. Indemnification Claims

All claims for indemnification by Buyer will be asserted and resolved as follows:

If a claim or demand for which Buyer may claim indemnity is asserted against or sought to be collected from Seller by a third party, Buyer shall as promptly as practicable give Notice to Seller; *provided*, failure to provide this Notice will relieve Seller only to the extent that the failure actually prejudices Seller.

- (a) Seller will have the right to control the defense and settlement of any claims in a manner not adverse to Buyer but cannot admit any liability or enter into any settlement without Buyer's approval.
- (b) Buyer may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

EXCEPT AS SET FORTH HEREIN WITH RESPECT TO THE PRODUCT, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

SUBJECT TO SECTION 9.3, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE 11 (INDEMNIFICATION), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY

PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PERFORMANCE ASSURANCE.

ARTICLE 13. CONFIDENTIALITY

13.1. Confidentiality Obligation

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' officers, directors, employees, lenders, counsel, accountants, advisors, or Rating Agencies, who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any Applicable Law, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable Governmental Body other than as set forth in Sections 13.1(e) and (f); (b) to the extent necessary for the enforcement of this Agreement; (c) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure; (d) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (e) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of the information being released); (f) with respect to Buyer, as may be furnished to its duly authorized Governmental Bodies, including without limitation the Commission and all divisions thereof, to Buyer's Procurement Review Group, a group of participants including members of the Commission and other governmental agencies and consumer groups established by the Commission in Commission decisions 02-08-071 and 03-06-071, and to Buyer's Cost Allocation Mechanism Group established by the CPUC in D.07-12-052, or (g) Seller may disclose the transfer of the Monthly Quantity under this Agreement to its SC in order for such SC to timely submit accurate Supply Plans. The existence of this Agreement is not subject to this confidentiality obligation; *provided*, neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (a) or (e) of the foregoing sentence of this Article 13.

13.2. Obligation to Notify

In connection with discovery requests or orders pertaining to confidential information in connection with this Agreement as referenced in Section 13.1(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:

- (a) Notify the other Party before disclosing the Confidential Information; and
- (b) Prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party will not be:

- (c) Prohibited from complying with a Disclosure Order; or
- (d) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information.

13.3. Remedies; Survival

The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. With respect to information provided in connection with this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.

ARTICLE 14. FORCE MAJEURE

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 15. MISCELLANEOUS

15.1. General

- (a) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (b) The term “including,” when used in this Agreement, shall be by way of example only and shall not be considered in any way to be in limitation.
- (c) The headings used herein are for convenience and reference purposes only.
- (d) Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

- (e) Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (f) Whenever this Agreement specifically refers to any Applicable Law, tariff, government department or agency, or Rating Agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff or organization.
- (g) Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any Applicable Law, tariff, rule, or regulation.
- (h) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the Bankruptcy Code.

15.2. Governing Law and Venue

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

15.3. Amendment

This Agreement can only be amended by a writing signed by both Parties.

15.4. Assignment

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may not be unreasonably withheld; *provided*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to any person or entity whose creditworthiness is equal to or higher than that of such Party, (b) transfer or assign this Agreement to an Affiliate of such Party which Affiliate’s creditworthiness is equal to or higher than that of such Party, or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party; *provided*, in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of

California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity.

15.5. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of, the Parties and their respective successors and assigns. This Agreement is not intended to confer any rights or remedies upon any other persons other than the Parties.

15.6. Waiver

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

15.7. No Agency

Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party's agent.

15.8. No Third-Party Beneficiaries

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

15.9. Entire Agreement

This Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.

15.10. Severability

If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

15.11. Multiple Originals

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

15.12. Mobile Sierra

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

15.13. Performance Under this Agreement

Each Party and its representatives shall maintain records and supporting documentation relating to this Agreement, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

**SAN DIEGO GAS & ELECTRIC
COMPANY**, a California corporation

[SELLER]

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

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

EXHIBIT A
DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

"ADR Guidelines" means the guidelines for Buyer's Automated Demand Response Program implemented pursuant to Decisions 12-04-045, 14-05-025, and 18-11-029, as modified or updated from time to time, including the updates to the guidelines that are submitted in the Tier Two advice letter process on September 1 of each year in compliance with Ordering Paragraph 8 of Decision 18-11-029.

"Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Agreement" has the meaning in the Preamble.

"Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Body that apply to either or both of the Parties, the DRP, the PDR or the terms of this Agreement.

"Arbitrator" has the meaning set forth in Article 10.4.

"Audit Notice" has the meaning set forth in Section 1.6(j).

"Automated Demand Response" or "ADR" is Buyer's demand response program offering Customers an incentive to install automated communication equipment and associated software that enhances their ability to reduce load during Buyer's demand response program events. For purposes ADR, Seller's participation in the CAISO Markets pursuant to this Agreement is a Buyer demand response program, pursuant to the September 24, 2015 disposition letter from Commission staff. The CPUC approved the ADR programs by Decision 12-04-045 and Decision 14-05-025.

"Automated Demand Response Customer" or "ADR Customer" is a non-Residential Customer that has installed the ADR equipment under Buyer's ADR and received, at minimum, approval from Buyer that it has been approved for its first (60%) incentive payment.

"Availability Assessment Hours" or "AAH" has the meaning set forth in the CAISO Tariff.

"Award" has the meaning set forth in Section 6.6(b).

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of

creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Bankruptcy Code” means the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*), as amended, and any successor statute.

“Bid” shall have the meaning in the CAISO Tariff.

“Bundled Service Customer” means a customer of Buyer as a utility distribution company who takes bundled services from Buyer as a utility distribution company including having all its power requirements purchased by Buyer.

“Business Day” means a day that is not a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday immediately following the U.S. Thanksgiving holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“Buyer” has the meaning set forth in the preamble.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing the same functions.

“CAISO Markets” has the meaning set forth in the CAISO Tariff.

“CAISO Tariff” means the most current tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Capacity Baseline” means a CAISO baseline as applicable to the PDR(s) in the DRAM Resource, as specified in the CAISO Tariff and approved by the CPUC for retail settlement purposes in the DRAM, and as limited by the following: (i) a day matching customer load ten-in-ten baseline with a twenty percent (20%) cap; (ii) a weather matching baseline with a forty percent (40%) cap; (iii) the use of control groups; and (iv) a five-in-ten baseline for residential customers, with a forty percent (40%) cap, as utilized for the calculation of Qualifying Capacity and Demonstrated Capacity, and for CAISO settlements, in accordance with Section 1.6 of this Agreement.

“Capacity Procurement Mechanism” has the meaning set forth in the CAISO Tariff.

“Cash” means U.S. Dollars held by or on behalf of Buyer as Performance Assurance hereunder.

“Cash Interest Rate” means the Federal Funds Effective Rate - the rate for that day opposite the caption “Federal Funds (Effective)” as set forth in the weekly statistical release designated as

H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

“Claiming Party” has the meaning set forth in Article 14.

“Commission” or “CPUC” means the California Public Utilities Commission, and all divisions thereof, or any successor thereto.

“Compliance Showing(s)” means the RAR compliance or advisory showings (or similar or successor showings), that an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Body having jurisdiction.

“Contract Price” means the price for each type of Product as specified in Exhibit E for each Showing Month.

“CPM Capacity” has the meaning set forth in the CAISO Tariff.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves (a) the requested relief in the approval filing and (b) the Agreement in full and in the form presented on terms and conditions acceptable to both Parties, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to both Parties; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure preferred resources under Commission Decision (D.)19-11-016.

“CPUC Decisions” means Commission Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-031, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 09-12-053, 10-06-036, 10-12-038, 11-06-022, 11-10-003, 12-06-025, 13-02-006, 13-04-013, 13-06-024, 14-03-026, 14-06-050, 14-12-024, 15-02-007, 15-06-063, 19-07-009, 19-06-026 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC RA Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC RA Filing Guide” is the [INSERT] annual document issued by the Commission which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the Commission’s resource adequacy program.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“Customer” means a person or entity that is either a: (i) Bundled Service Customer; (ii) community choice aggregation customer or direct access customer who would otherwise be eligible to be a Bundled Service Customer; or (iii) Unbundled Service Customer.

“Customer Data Access Systems” has the meaning described in CPUC Decision 13-09-025.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“DC Dispatch” means a Dispatch of a PDR in the DRAM Resource in the CAISO market, in accordance with the CAISO Tariff, for a duration of (i) one (1) hour within the Availability Assessment Hours for all Showing Months except the Showing Month of August or (ii) two (2) consecutive hours within the Availability Assessment Hours for the Showing Month of August that is used to demonstrate capacity; provided that, such two (2) consecutive hours requirement may be satisfied by a combination of a DC Dispatch and a DC Test.

“DC-QC Ratio” has the meaning set forth in Section 4.1.

“DC Test” means a capacity test of a PDR in the DRAM Resource for one hundred percent (100%) of such PDR’s Qualifying Capacity for the applicable Showing Month (where such Qualifying Capacity has been submitted in Seller’s Supply Plan for that Showing Month), with a duration of at least two (2) consecutive Availability Assessment Hours, conducted by the Seller’s SC during the applicable Showing Month, in accordance with the CAISO Tariff and D.14-06-050, Appendix B, that is used to demonstrate capacity.

“Default Adjustment Value” has the meaning set forth in Section 7.2(b)(v)(B), CPUC Resolution E-4838, and CPUC Resolution E-4906.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 4.1.

“Delivery Period” has the meaning set forth in Section 1.3.

“Demand Response Provider” or “DRP” has the meaning in the CAISO Tariff.

“Demonstrated Capacity” has the meaning set forth in Section 1.6(a).

“Dispatch” means the act of reducing all or a portion of the electrical consumption of the PDR pursuant to a Dispatch Instruction.

“Dispatch Instruction” has the meaning in the CAISO Tariff.

“Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement.

“Distributed Energy Resource Aggregation” has the meaning in the CAISO Tariff.

“Diverse Business Enterprises” or “DBE” means Women, Minority, Disabled Veteran (WMDV) and Lesbian, Gay, Bisexual and Transgender (LGBT) Business Enterprises as defined in CPUC General Order 156.

“DRAM” means the Demand Response Auction Mechanism, which is a procurement mechanism during *[Year]* for the Product as described in CPUC D.14-12-024, D.17-10-017, and D.19-07-009.

“DRAM Resource” means the sum of the PDR(s) that Seller identifies pursuant to Section 1.4 that will provide Product to Buyer.

“DRAM Resource Customer” is a Bundled Service Customer or Unbundled Service Customer account at the Service Account Identification level that is included in the DRAM Resource.

“Early Termination Date” has the meaning set forth in Section 9.2(a).

“EFC” shall mean Effective Flexible Capacity as defined in the CAISO Tariff.

“Event of Default” has the meaning set forth in Section 9.1.

“Execution Date” has the meaning set forth in the preamble.

“Executive(s)” has the meaning set forth in Section 10.2.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“Financial Consolidation Requirement” has the meaning set forth in Section 5.7(a).

“Fitch” means Fitch Ratings Ltd. or its successor.

“Flexible Capacity” means any and all flexible resource adequacy attributes associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Flexible RAR, and which may be (i) exclusive of Local Capacity and (ii) be in Flexible Category 1 (base flexibility), 2 (peak flexibility) or 3 (super-peak flexibility) as described in the CAISO Tariff.

“Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; (iv) Seller’s ability to sell the Product at a greater price; (v) a failure of performance of any other entity that is not a Party, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event; or (vi) breakage or malfunction of equipment, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event.

“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“IFRS” means the International Financial Reporting Standards.

“Initial Negotiation End Date” has the meaning set forth in Section 10.2.

“Interest Amount” means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all calendar days in such Interest Period; each daily interest amount to be determined by such Party as follows: (i) the amount of Cash held by such Party on that day; multiplied by (ii) the Cash Interest Rate for that day, divided by (iii) 360.

“Interest Period” means the period from (and including) the last Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Business Day on which Cash was Transferred to such Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“JAMS” has the meaning set forth in Article 10.3.

“Joint Resource” means respectively a PDR which includes DRAM Resource Customers registered by the Seller (or its DRP) and other customers registered by another aggregator (or its DRP) who are not considered part of the respective PDR for purposes of meeting Seller’s obligations under this Agreement.

“LCA Customers” means a Customer that either (i) directly takes or receives electricity services from Buyer’s LCA or [(ii) directly takes or receives electricity services from a lower voltage substation that electrically connects to Buyer’s LCA. **[[Does this work for SDG&E?]]**

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit B and acceptable to Buyer, provided by Seller from an issuer acceptable to Buyer that is either a U.S. financial institution or a U.S. commercial bank or a U.S. branch of a foreign bank with such financial institution or the bank (i) having (a) Credit Ratings of at least "A-" by S&P, "A-" by Fitch and "A3" by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least "A-" by S&P, if such entity is rated by S&P, "A-" by Fitch, if such entity is rated by Fitch, and "A3" by Moody's, if such entity is rated by Moody's; or (c) a Credit Rating of at least "A-" by S&P or "A3" by Moody's, or "A-" by Fitch if such entity is rated by only one Ratings Agency; and (ii) having shareholder equity (determined in accordance with generally accepted accounting principles) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (A) "A-" by S&P, "A-" by Fitch, and "A3" by Moody's, if such issuer is rated by the Ratings Agencies, (B) "A-" by S&P, "A-" by Fitch or "A3" by Moody's if such issuer is rated by only two of the Ratings Agencies, or (C) "A-" by S&P, "A-" by Fitch, or "A3" by Moody's, if such issuer is rated by only one Ratings Agency; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Term of the Agreement, in any such case without replacement; or (v) the issuer of such Letter of Credit shall become Bankrupt; *provided*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Local Capacity” means any and all resource adequacy attributes or other locational attributes associated with the PDR(s) designated by Seller and comprised of LCA Customers pursuant to Section 1.4, from a Local Capacity Resource (as defined in CAISO Tariff) in Buyer's Local Capacity Area, as applicable and as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Local RAR, which may be exclusive of any Flexible Capacity, as applicable to the Product.

“Local Capacity Area” or “LCA” means the areas where LCA Customers are electrically interconnected to any of the [INSERT].

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“LSE” means load-serving entity.

“Manager” has the meaning set forth in Section 10.2.

“Mediator” has the meaning set forth in Section 10.3.

“Merger Event” means, with respect to a Party, that such Party consolidates or amalgamates with, merges into or with, or transfers substantially all its assets to another entity and (i) the resulting entity fails to assume all the obligations of such Party hereunder, or (ii) the resulting entity's creditworthiness is materially weaker than that of such Party immediately prior to such action. The creditworthiness of the resulting entity shall not be deemed to be ‘materially weaker’ so long as the resulting entity maintains a Credit Rating of at least that of the applicable Party, as the case may be, immediately prior to the consolidation, merger or transfer.

“Monthly Contracted Quantity” means the respective amount of each type of Product set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months.

“Monthly Quantity” means the aggregate amount of all Monthly Contracted Quantities set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months for the respective types of Product.

“Moody’s” means Moody’s Investors Service, Inc. or its successor.

“Must-Offer Obligation” or “MOO” means Seller’s obligation to Bid or cause Seller’s SC to Bid the DRAM Resource into the CAISO Markets based on the type of Product and in accordance with the CAISO Tariff.

“NQC” shall mean Net Qualifying Capacity as defined in the CAISO Tariff.

“Notification Time” means the 10:00 a.m. Pacific Prevailing Time on a Business Day.

“Non-Competitive Behavior” means bidding behavior providing clear evidence of market manipulation or collusion.

“Non-Defaulting Party” has the meaning set forth in Section 9.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 8.

“Partial DC Dispatch” has the meaning set forth in Section 1.6(a)(i).

“Performance Assurance” has the meaning set forth in Section 5.1(a). Performance Assurance must be in the form of Cash or Letter of Credit. Any Cash received and held by Buyer after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash.

“Potential Event of Default” means an event which, with Notice or passage of time or both, would constitute an Event of Default.

“Procurement Review Group” has the meaning set forth in Section 13.1.

“Product” means either System Capacity, Local Capacity and/or Flexible Capacity. The particular type of Product sold by Seller to Buyer under this Agreement is specified in Table 1.1(b). Buyer and Seller will have separate agreements for separate products and will combine multiple awards of the same product into one agreement at a weighted average price.

“Prohibited Resource” means a distributed generation technology using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in topping cycle Combined Heat and Power (CHP) or non-CHP configuration. The following resources are exempt: pressure reduction turbines and waste-heat-to-power bottoming cycle CHP, resources using renewable fuels (i.e. renewable gas, renewable diesel, and biodiesel) that have received certification from the California Air Resources Board, as well as energy storage resources not coupled with fossil fueled resources.

“Proxy Demand Resource” or “PDR” has the meaning in the CAISO Tariff.

“QC Implementation Guidelines” has the meaning set forth in Section 3.1(a)(ii).

“Qualified Assignee” has the meaning set forth in Section 13.5.

“Qualifying Capacity” means the load reduction for each PDR in the DRAM Resource, calculated utilizing the Capacity Baseline, consistent with the QC Implementation Guidelines, the CPUC Decisions and the CAISO Tariff.

“RAR” means the resource adequacy requirements established for LSEs by the Commission pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Body having jurisdiction, or successor program requirements.

“Ratings Agency” means any of S&P, Moody’s, and Fitch (collectively the ‘Ratings Agencies’).

“Referral Date” has the meaning set forth in Section 10.2.

“Resource Adequacy” and “Resource Adequacy Benefits” have the meanings set forth in the CPUC Decisions.

“Resource ID” has the meaning in the CAISO Tariff.

“Residential Customer” means a DRAM Resource Customer which is a Single Family or Multi-Family Dwelling customer on a Domestic rate, including RV Parks, Residential Hotels, and Mobile Home Parks and includes electric vehicle charging for customers on Domestic Rate if separately metered, as such capitalized terms are defined in Rule 1.

“Residential Customer Product” means Product that is comprised solely of Residential Customers and Small Commercial Customers; *provided* that the percentage of Residential Customers in the PDR(s) constituting the DRAM Resource is equal to or greater than ninety percent (90%). Where multiple PDRs, or portions thereof, are used to meet Seller’s Demonstrated Capacity obligations, the percentage requirements apply in the aggregate, based on the total number of PDR Customer service accounts in the DRAM Resource used to show Demonstrated Capacity.

“Revenue Quality Meter Data” means interval meter data that has been validated, edited, and estimated in accordance with the Direct Access Standards for Metering and Meter Data as described in Rule 22. [Double check]

“S&P” means Standard & Poor’s Financial Services LLC, or its successor.

“SAID” or “Service Account Identification” means a Buyer specific identifier or number for tracking energy service deliveries for a specific load through one or more meters at a customer premises or location as described in Rule 1.

“Scheduling Coordinator” or “SC” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth in the preamble.

“Settlement Amount” means the sum of the estimated Delivered Capacity Payments for all of the remaining Showing Months of the original Delivery Period as in effect prior to such early termination, including the current Showing Month if not invoiced pursuant to Section 4.2, as of the Early Termination Date, with such estimated Delivered Capacity Payments being based on

the sum of the applicable Monthly Contracted Quantity times the applicable Contract Price for each type of Product.

“Shortfall Capacity” means the amount of capacity with respect to the Monthly Contracted Quantity for a type of Product for any portion of a Showing Month which was shown by Buyer in its Compliance Showing that CAISO determines requires outage replacement in accordance with Section 40.7 of the CAISO Tariff.

“Showing Month” shall be each day of each calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Execution Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Small Commercial Customer” means a DRAM Resource Customer which is a non-Residential Customer with monthly maximum demand of 20 kW or less, including agricultural/pumping customers (PA-1, PA-2, TOU-PA-2 rates) and TOU-EV3, service to electric charging facilities with monthly maximum demand of 20 kW or less. Excludes customers on rate schedules for fixed usage and unmetered service (Schedules LS-1, LS-2, OL-1, TC-1, Wi-Fi-1, and WTR).

“Successor” means any successor accounting practices to GAAP or IFRS.

“Supply Plan” has the meaning set forth in the CAISO Tariff.

“System Capacity” means system Resource Adequacy Benefits associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR, which may be exclusive of any Local Capacity and Flexible Capacity as indicated on Table 1.1(b).

“Term” has the meaning set forth in Section 1.2.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, which shall include the Settlement Amount, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. If Buyer is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body, then Buyer may estimate the penalties or fines and include them in the Termination Payment amount.

“Transfer” means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto: (i) in the case of Cash, the payment or transfer by wire transfer into one or more bank accounts specified by the recipient; (ii) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient.

“Unbundled Service Customer” means a retail customer of the Buyer acting as a utility distribution company, who takes and receives its electrical power requirements from a different

Load Serving Entity that is not the Buyer, pursuant to CPUC Rule 22 Direct Access or Rule 23 Community Choice Service.

“Verification Administrator” has the meaning set forth in CPUC Resolution E-4838 and CPUC Resolution E-4906.

EXHIBIT B

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

BENEFICIARY:

San Diego Gas & Electric Company

[Address]

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount stated above (the "Available Amount"), effective immediately.

This Letter of Credit shall be of no further force or effect at 5:00 p.m., California time, on the expiration date stated above or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit (the "Expiration Date").

For the purpose hereof, "Business Day" shall mean any day other than:

1. A Saturday or a Sunday,
2. A day on which banking institutions in the city of San Diego, California, are required or authorized by Law to remain closed, or
3. A day on which the payment system of the Federal Reserve System is not operational.

It is a condition of this Letter of Credit that the Expiration Date shall be automatically extended without amendment for one (1) year from the Expiration Date hereof or any future Expiration Date unless at least sixty (60) calendar days prior to such Expiration Date, we send notice to you by certified mail or hand delivered courier, at the address stated below, that we elect not to extend this Letter of Credit for any such additional period.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by complying presentation on or before 5:00 p.m. California time, on or before the Expiration Date, of the following:

1. A copy of this Letter of Credit and all amendments;
2. A copy of the Drawing Certificate in the form of Attachment "A" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary signing as such; and
3. A copy of the Sight Draft in the form of Attachment "B" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

Drawings may also be presented by facsimile transmission ("Fax") to fax number [insert number] under telephone pre-advice to [insert number] or alternatively to [insert number]; provided that such Fax presentation is received on or before the Expiration Date on this instrument in accordance with the terms and conditions of this Letter of Credit. It is understood that any such Fax presentation shall be considered the sole operative instrument of drawing. In the event of presentation by Fax, the original documents should not also be presented.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Bank address/contact].

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [INSERT] Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment. Except in the case of an increase in the Available Amount

or extension of the Expiration Date, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

By

Name: [print name]_____

Title: [print title]_____

ATTACHMENT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT
REFERENCE NUMBER: _____

DATE: _____

[insert Beneficiary name] (the “Beneficiary”), demands *[Issuing Bank Name]* (the “Bank”) payment to the order of the Beneficiary the amount of U.S. \$_____ (_____ U.S. Dollars), drawn under the Letter of Credit referenced above (the “Letter of Credit”), for the following reason(s) [check applicable provision]:

[]A. An Event of Default, as defined in that certain Demand Response Resource Purchase Agreement between *[insert counterparty name]* or its successor (the “Counterparty”) and Beneficiary, dated as of *[Date of Execution]* (the “Agreement”) with respect to the Counterparty has occurred and is continuing.

[]B. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and the Counterparty or its successor has not provided Beneficiary alternative financial security acceptable to Beneficiary.

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

Authorized Signature for Beneficiary:

[insert Beneficiary name]

By:

Name: [print name]

Title: [print title]

ATTACHMENT B

SIGHT DRAFT

[INSERT DATE]

TO:
[ISSUING BANK NAME & ADDRESS]

PAY AT SIGHT TO THE ORDER OF [INSERT BENEFICIARY NAME] (THE
“BENEFICIARY”) THE AMOUNT OF USD [INSERT AMOUNT] DRAWN UNDER
[ISSUING BANK NAME] IRREVOCABLE NON-TRANSFERABLE STANDBY
LETTER OF CREDIT NUMBER [INSERT NUMBER] ISSUED ON [INSERT DATE].

FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT
SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH
THE FOLLOWING INSTRUCTIONS:

[INSERT WIRING INSTRUCTION]

AUTHORIZED SIGNATURE
[INSERT BENEFICIARY NAME]

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]

EXHIBIT C-2

Form of Notice of Demonstrated Capacity

EXHIBIT C2 - Notice of Demonstrated Capacity (EFC)

For use with Flexible Capacity Product

Demand Response Auction Mechanism (DRAM)

Showing Month:
Seller:
Seller Contact Name:
Seller Contact Phone:
SOD:
Local Capacity Area (LCA):

Total "Monthly Quantity" (MW):
Total "Demonstrated Capacity" (MW): 0.00 MW
Residential Product (Yes/No):
Therefore, in Delivered Capacity Payment formula, "B" = 0.00 MW and "D" = ...

(mark "n/a" if not a Local Capacity product)

PDRs in the DRAM Resource		"Demonstrated Capacity" (MW) --- <i>For each PDR Resource (row), choose one demonstration method (column) to establish monthly Demonstrated Capacity</i>				Joint Resource Adjustment	Prohibited Resources Adjustment	Product Delivery	Local Capacity Product Delivery					
PDR Resource Name	CAISO Resource ID	Assigned EFC (MW)*	Flexible Category (1, 2, or 3)	Capacity Test	Must Offer Obligation (MOO)	Dispatch Results ¹	MW Claimed	Adjusted MW Claimed	Local Capacity Product					
				Average hourly load reduction across two consecutive hours during capacity test conducted by Seller's SC during Showing Month	Average capacity amount Seller bid into CAISO during Showing Month	Average hourly load reduction resulting from Dispatch during Showing Month								
				Raw Demonstrated Capacity	Location of Assigned EFC or Raw Demonstrated Capacity	Raw Demonstrated Capacity	Location of Assigned EFC or Raw Demonstrated Capacity	Joint Resource? (Yes/No)	Default Adjusted Value (DAV) (MW)	Net MW Claimed	Total Service Accounts**	Residential Customer Service Accounts**	Small Business Customer Service Accounts**	Customer Service Accounts within specified LCA**
Demonstrated Capacity ==>				0.00 MW	0.00 MW	0.00 MW	0.00 MW	0.00 MW	0.00 MW	0.00 MW	0	0	0	0
IMPORTANT NOTES: * "Monthly Quantity" is from the quantity & pricing Table in Exhibit E. ** In case of a Joint Resource, report full PDR EFC here. -- If using a Joint Resource, report Service Account information (count) only for the portion used.														

This information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the DRAM Resource Purchase Agreement with (insert IOU name):

*A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

EXHIBIT E
MONTHLY CONTRACTED QUANTITY
AND
CORRESPONDING CONTRACT PRICE

Showing Month	Product [Insert]	
	[Year]	
	Monthly Quantity (kW for each day of Showing Month)	Contract Price (\$/kW-month)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[Parties to complete one table for each type of Product indicated in Table 1.1(b) and accepted bid information.]

EXHIBIT F
IMPLEMENTATION GUIDELINES FOR QUALIFYING CAPACITY
(D.19-07-009 Appendix A)

- A. Sellers should provide the following details to the Utility for demand response resources being offered, with the auction capacity bid submission no later than 15 calendar days before the year-ahead filings and monthly Supply Plans are due for the Seller:
1. Customer class (or percent of mix): Residential, Non-residential
 2. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 3. Dispatch method: automated via cloud control, or other (describe)
 4. Projected number of Service Accounts
 5. Projected aggregated load (if storage based, projected aggregated capacity)
 6. Projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered)
 7. Supporting historical performance data for A.6 (from a prior test or market dispatch for a demand response resource with similar characteristics as A.1, A.2, and A.3). Where historical data is not available, the Provider should reference suitable publicly available performance data that best represents the anticipated performance of the resource. Along with the supporting performance data, the following details for the resource associated with the supporting performance data should be provided to establish similar characteristics:
 - a. Customer class (or percentage mix): Residential, Non-residential
 - b. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 - c. Dispatch method: automated via cloud control, or other (describe)
 - d. Number of Service Accounts
 - e. Aggregated load (if storage based, aggregated capacity)
 - f. Percentage of load impact or reduction delivered (if storage based, percentage of capacity delivered.)
 8. Estimated Qualifying Capacity = A.5 x A.6
- B. Qualifying Capacity estimates should be provided for the resource adequacy measurement hours and are expected to align with the CAISO Availability Assessment Hours.
- C. The same baseline must be used for estimation of Qualifying Capacity at different stages of the contract.
- D. To the extent the projected percentage load impact for capacity delivered in A.6 deviates from the supporting data in A.7, the Provider should provide supplemental information to explain the reasonableness of the resulting “Estimated Qualifying Capacity” provided in A.8.

EXHIBIT F (Cont'd)

- E. To the extent the contract/ resource consists of heterogenous combination of load types (in terms of A.1 through A.3 characteristics), the Provider could subdivide the contract/resource and provide the above information for each component and apply a weighted average to estimate Qualifying Capacity in A.8.
- F. For auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information for the month with the highest megawatts. For monthly resource adequacy Supply Plan submissions, the above information should correspond to the actual delivery month.
- G. At the auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information at the contract level. For monthly resource adequacy Supply Plan submissions, the above information must be provided at the resource level.

DISTRIBUTION SERVICES AGREEMENT

between

SAN DIEGO GAS & ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

DISTRIBUTION SERVICES AGREEMENT

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DISTRIBUTION SERVICES AGREEMENT

This Distribution Services Agreement is made by and between San Diego Gas & Electric Company, a California corporation ("SDG&E", and as further defined herein, "Buyer") And _____, a _____ company ("Seller") as of _____ (the "Effective Date"). Seller and Buyer are referred to individually as "Party" or collectively as "Parties".

RECITALS

- I. Buyer seeks to purchase Distribution Services as defined herein from Distributed Resources in order to defer upgrades to its distribution system.
- II. Seller desires to sell Distribution Services as defined herein to Buyer from the Project in accordance with the terms of this Agreement.

Now, therefore, in consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1. TERM; DELIVERY TERM

1.1. Term.

(a) The "Term" of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including until any compensation for Distribution Services, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Assurance is released and/or returned as applicable. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 15.1 through 15.7 (Indemnities and Insurance) and any other indemnity rights survive the end of the Term for an additional twelve (12) months after; (ii) all rights and obligations under Article Nineteen (Confidentiality) survive the end of the Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The "Delivery Term" is the period commencing on the Initial Delivery Date as set forth in Section 2.2 and continuing until _____ unless earlier terminated in accordance with the terms and conditions of this Agreement. The Initial Delivery Date will not be extended or delayed for any reason, including events of Force Majeure.

1.2. Binding Nature.

(a) Effectiveness of Agreement Prior to CPUC Approval. This Agreement shall be effective and binding as of the Effective Date, but only to the extent required to give full effect

to, and enforce, the rights and obligations of the Parties under: *[Section references to be updated based on final agreement.]*

- (i) Articles One, Eight, and Eleven through Twenty-One;
- (ii) Sections 7.1(a)(i) – (iii); 7.2 - 7.4; and
- (iii) Sections 10.3 – 10.5.

(b) Effectiveness of Agreement on and after CPUC Approval.

(i) No later than [] from the date on which Buyer files this Agreement with the CPUC, Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties may, in their sole discretion, renegotiate this Agreement and Buyer shall file the amended agreement with the CPUC seeking approval thereof. If, within sixty (60) days, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

(ii) This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the date on which the CPUC Approval has been obtained or waived in writing by both Parties. Unless otherwise specified, all obligations of the Parties are binding throughout the Delivery Term.

1.3. CPUC Approval Delayed. If CPUC Approval has not been obtained by the CPUC Approval deadline date set forth in Section 1.2(b)(i), then either Party may terminate this Agreement effective upon Notice to the other Party, unless the need for such CPUC Approval has been waived in writing by both Parties. Following the termination of this Agreement pursuant to this Section 1.3, neither Party shall have any obligation or liability to the other by reason of such termination.

ARTICLE 2. DELIVERY CONDITIONS

2.1. Project Development. Seller shall take all actions and obtain all approvals necessary to deliver to Buyer Distribution Services pursuant to the terms of this Agreement, which include those obligations set forth below in Section 2.2(a). Seller must complete the Delivery Conditions in accordance with Section 2.2(b).

2.2. Delivery Conditions Prior to Initial Delivery Date.

(a) The “Initial Delivery Date” shall be the date upon which Seller satisfies all the following conditions (“Delivery Conditions”) and the Product is available to Buyer:

(i) No later than thirty (30) days prior to the Initial Delivery Date, at Seller’s expense, Seller shall have secured all Governmental and grid operations approvals as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver Distribution Services at the Contract Capacity to Buyer.

(ii) No later than the Initial Delivery Date, Seller shall have posted the Delivery Term Security as required by Section 10.4(a)(ii).

(iii) No later than thirty (30) days prior to the Initial Delivery Date, Seller shall have delivered to Buyer the Safety Attestation in accordance with Section 2(a) of Appendix XIII.

(iv) No later than the Effective Date, Seller shall have submitted for Buyer's review a Project Safety Plan, which must demonstrate Seller's ability to comply with the Safety Requirements on the Initial Delivery Date and for the Delivery Term.

(v) As of the Initial Delivery Date, no Seller's Event of Default shall have occurred and remain uncured, except that a Seller shall not have an opportunity to cure Event of Default resulting from Seller's failure to meet a Critical Milestone.

(vi) As of the Initial Delivery Date, at Seller's expense, Seller or Contractor shall have developed the Project to a state sufficient to enable (A) Seller to satisfy the obligations of the Seller herein and (B) the Project to deliver Distribution Services at the Contract Capacity to Buyer.

(vii) No later than thirty (30) days prior to the Initial Delivery Date, at Seller's expense, Seller shall have installed any metering necessary to verify delivery of the applicable Distribution Services in accordance with Section 4.7 and any applicable tariffs of the Utility Distribution Company.

(viii) Seller shall have met each Critical Milestone no later than the applicable dates set forth in Appendix V.

(ix) No later than thirty (30) days prior to Initial Delivery Date, Seller has entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Distribution Owner's electric system.

(b) Seller shall Notify Buyer of the satisfaction of each Delivery Condition, and of each Critical Milestone, in accordance with this Section 2.2(b). Seller's Notices hereunder must contain sufficient documentation to demonstrate completion of the Delivery Condition or Critical Milestone, as applicable. Once all of the Delivery Conditions to the applicable Initial Delivery Date have been satisfied or waived, the Parties shall execute and exchange on the applicable Initial Delivery Date the "Initial Delivery Date Confirmation Letter" attached as Appendix IV.

2.3. Failure to Meet Delivery Conditions. If Seller fails to satisfy any of the Delivery Conditions by the deadlines set forth in Section 2.2(a) and Critical Milestones set forth in Appendix V, then a Seller's Event of Default shall be deemed to occur in accordance with Section 7.1(a)(v), and Buyer shall have no obligation to purchase any Distribution Services from Seller hereunder.

ARTICLE 3. TRANSACTION

3.1. Transaction. Subject to Section 2.3, on and after the Initial Delivery Date through the end of the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, Distribution Services exclusively from the Project at the Delivery Point(s) in the aggregate amount

of the Contract Capacity. Seller shall deliver Distribution Services to Buyer hereunder in accordance with Buyer's instructions pursuant to Section 4.8. In no event will Buyer be obligated to purchase Distribution Services prior to the Initial Delivery Date.

3.2. Distribution Services. Seller shall provide Buyer with Distribution Services exclusively from the Project. "Distribution Services" shall consist of the Project's ability to provide, and the provision of, services that are checked in Appendix II.

3.3. Contract Capacity. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits and shall deliver to Buyer for its exclusive use, Distribution Services pursuant to the terms and conditions contained herein and, in a quantity, equal to the Contract Capacity specified in Appendix II.

3.4. Delivery Point(s). The Delivery Point will be the point of interconnection for such Distributed Resource to Buyer's electrical distribution facilities as defined in Appendix III. Seller shall be solely responsible for any costs or charges imposed on or associated with Distribution Services up to and at the Delivery Point(s). Buyer shall be responsible for any costs or charges imposed on or associated with Distribution Services after the Delivery Point(s).

3.5. Information Sharing and Shared Learning. Throughout the Term, Seller agrees to share meter data and any information reasonably available to Seller that Buyer reasonably deems necessary for the Buyer to plan and operate the distribution system and to prepare progress reports required by Governmental Authorities in connection with this Agreement, upon Buyer's reasonable request, with such information to be treated by Buyer as Confidential Information. Buyer shall provide Seller with reasonable advance notice of the submission of any of Seller's Confidential Information with any Governmental Authority. Seller shall provide such applicable meter data to Buyer in a format and to a platform as Notified by Buyer to Seller prior to such request. For information related to Seller's multiple uses of resources comprising the Project, Seller shall promptly provide Notice to Buyer any time Seller provides any services or products from such resources to a third party.

3.6. Third-Party Sales. Seller may sell other products, including Distribution Services in excess of the Contract Capacity, to third parties or available markets ("Third Party Sales"). Seller is solely responsible for the costs and solely entitled to the revenues associated with such Third-Party Sales.

ARTICLE 4. INTERCONNECTION & OPERATIONS

4.1. Interconnection. The Distributed Resources that compose the Project shall each be interconnected to circuits or loads or associated with load facilities that are electrically interconnected to one or more of the circuits described in Appendix III. If an interconnection agreement is required, Seller shall interconnect the Project in accordance with the requirements and terms and conditions set forth in the Utility Distribution Company's applicable tariffs, and, if applicable, the participating Transmission Owner's applicable tariffs and the CAISO tariff, in order to safely and reliably deliver Distribution Services to Buyer. Provided the Utility Distribution Company performs in accordance with applicable tariffs, Seller shall be responsible for all delays, costs and expenses associated with such interconnection.

4.2. Interconnection Agreement. At Seller's expense, Seller shall (a) execute all necessary Interconnection Agreements, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of Distribution Services, and (c) arrange, schedule and be responsible for any and all electric service (including any Governmental Approvals required for the foregoing). At no cost or liability to Buyer, Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Utility Distribution Company's applicable tariffs, so as to be able to deliver Distribution Services to Buyer. Buyer will not bear any costs or liability under this Agreement related to interconnection or electric distribution service for the Project, regardless of whether SDG&E is the Utility Distribution Company for the Project. To the extent Seller undertakes Third Party Sales, Seller is solely responsible for executing any necessary interconnection agreements and fulfilling all contractual, metering and applicable interconnection requirements necessary to make such Third-Party Sales.

4.3. Operational Control. During the Delivery Term, Seller shall operate and maintain the Project such that the Project is able to deliver Distribution Services to Buyer in accordance with this Agreement. Notwithstanding Seller's obligations to deliver Distribution Services, Seller will have sole operational control of the Project and be solely responsible for operation and maintenance of the Project. Buyer will not bear any costs or liability related to ownership, operation, scheduling, dispatch, or maintenance of the Project. In addition, Buyer shall have no liability for any failure by Seller to comply with Utility Distribution Company tariff, including any penalties, charges or fines imposed on Seller for such noncompliance.

4.4. Failure to Comply with Restricted Periods.

(a) Seller shall operate the Project in a manner that does not cause an increase in net loading on the circuits specified in Appendix III during Restricted Periods. Whether an increase in net loading on the circuits specified in Appendix III has occurred during a particular Restricted Period will be determined by Buyer in accordance with the measurement and verification parameters set forth in Appendix VIII.

4.5. Intentionally Omitted.

4.6. Intentionally Omitted.

4.7. Metering and Communications Systems. To the extent applicable as set forth in Appendix X, Seller shall install all metering, communications systems and equipment for the Project ("Communications Systems") at Seller's sole cost and expense that is necessary to, at all times during the Delivery Term, (i) enable Seller to meet Buyer's instructions in accordance with 4.8, (ii) enable Buyer to remotely dispatch (e.g. immediately disconnect for safety and reliability) and monitor the status of the Project on an aggregate and individual resource basis, (iii) permit Buyer to have real time information access to the operations of the Project, including the ability to measure increases and decreases in real time load/production, and (iv) provide Distribution Services. All electric metering equipment and submeters, whether owned by Seller or by a third party, which are installed on Seller's side of the Delivery Point, as applicable, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Electrical Practices; provided that if the electric metering equipment test is conducted by the interconnecting utility, testing shall be conducted in accordance with the procedures and the standards generally applied by such utility. In the event that, during the Delivery Term, Buyer develops its own system that allows Buyer to exercise greater monitoring or more efficient dispatch of the Project, upon Buyer's notice Seller shall, at Seller's expense, promptly enable its Communications

Systems to interface with Buyer's system such that Buyer may monitor and dispatch the Project through Buyer's system.

4.8. Scheduling. During the Operating Parameters set forth in Appendix XI, Buyer may request the Project to deliver Distribution Services as described in Appendix II at any amount up to the Contract Capacity by providing an instruction to Seller in a manner to be determined by Buyer in its sole discretion, which may include telephonic or electronic notification. Buyer's delivery instruction will state, for each Delivery Hour covered by the delivery instruction, the quantity of the applicable Distribution Service to be delivered by Seller during such Delivery Hour.

4.9. Intentionally Omitted.

4.10. Supplier Diversity. At Buyer's request, Seller will provide information to Buyer relating to Seller's or Seller's contractor's use, during Project construction, of "Women-Owned Businesses" or "Minority-Owned Businesses" or "Disabled Veteran Business Enterprises" as defined in CPUC General Order 156, and the number of new employees hired by Seller or Seller's contractors and the number of women, minority, and disabled veterans trained or hired by Seller or Seller's contractor's as contemplated under Cal. Public Utilities Code §910(a)(8), as each such group of entities and individuals may be amended from time to time or further defined, supplemented, or superseded by applicable Law or replaced with similar designations or certifications. ***[Include other covenants related to "women-owned business" or "minority-owned business" as may be applicable to the Seller.]***

4.11. Standards of Care. Seller shall comply with all applicable requirements of Law, Utility Distribution Company tariffs and agreements, Governmental Approvals, CARB, FERC, NERC and WECC in its scheduling, interconnection, operation and maintenance of the Project and as contemplated by this Agreement. Seller shall (a) acquire and maintain all Governmental Approvals necessary for the construction, operation, and maintenance of the Project consistent with Safety Requirements; (b) Notify Buyer of any modifications or lapse in renewal of Governmental Approvals; and (c) at Buyer's request, provide to Buyer digital copies of any Governmental Approvals. For the avoidance of doubt, Seller shall be responsible for procuring and maintaining, at its expense, all emissions credits required for operation of the Project throughout the Delivery Term in compliance with Law and to permit operation of the Project in accordance with this Agreement. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any documents, information, or instruments with respect to delivered Distribution Services reasonably necessary to enable Buyer to comply with the requirements of any Governmental Authority. Nothing hereunder shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

ARTICLE 5. TESTING AND VERIFICATION

5.1. Performance Testing.

(a) All performance tests of the Project, including Initial Performance Test and any additional procedures and protocols related to Performance Testing as agreed between Buyer and Seller required in Appendix V ("Test Procedures"), will be performed in accordance with the test procedures set forth in Appendix VIII ("Performance Test"). Seller shall bear all costs and receive all revenues, if applicable, associated with all Performance Tests.

(b) After the Initial Delivery Date and during the Delivery Term, Buyer will have the right to conduct, at Seller's sole expense, one (1) Performance Test ("Buyer Performance

Test”) each calendar year to demonstrate whether the Project is capable of delivering the Distribution Services at the Contract Capacity. Seller will have a right to retest the Project with a Performance Test once each calendar year after a Buyer Performance Test (“Seller Retest”).

(i) If a Buyer Performance Test or Seller Retest, if applicable, demonstrates the Project is capable of delivering Distribution Services at or above 100% of the Contract Capacity, the Contract Capacity will remain the Contract Capacity;

(ii) If a Buyer Performance Test or Seller Retest, if applicable, demonstrates the Project is not capable of delivering Distribution Services at 100% or more of the Contract Capacity, an Event of Default shall occur in accordance with Section 7.1(a)(vii).

5.2. Measurement and Verification. The amount of Distribution Services the Project delivers will be measured for all purposes under this Agreement based on the Project’s technology using the methodologies and parameters set forth in Appendix X.

ARTICLE 6. COMPENSATION

6.1. Contract Price. The price for Distribution Services during the Delivery Term shall be equal to the Contract Price for each Delivery Month.

<u>Month</u>	<u>Contract Price</u> <u>(\$/Delivery Month)</u>
January	\$[]
February	\$[]
March	\$[]
April	\$[]
May	\$[]
June	\$[]
July	\$[]
August	\$[]
September	\$[]
October	\$[]
November	\$[]
December	\$[]

6.2. Monthly Payment. Buyer shall pay Seller a monthly payment for each Delivery Month of the Delivery Term in accordance with Article 9, below.

ARTICLE 7. EVENTS OF DEFAULT; REMEDIES

7.1. Events of Default.

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a “Seller’s Event of Default”):

(i) any asset of Seller that is material to its performance under this Agreement is taken by or is subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within sixty (60) days after its levy;

(ii) Seller fails to satisfy the creditworthiness and collateral requirements and Seller fails to provide collateral acceptable to Buyer within ten (10) Business Days of Buyer's written demand therefor pursuant to Sections 10.3, 10.4, and 10.5;

(iii) any material misrepresentation or omission in any metering (or submetering) or any report or Notice with regard to delivery or replacement of Distribution Services required to be made or delivered by Seller to Buyer, or undue delay or withholding of such data, report or Notice, which misrepresentation, omission or undue delay or withholding is not cured within ten (10) Business Days of Buyer's written demand therefor;

(iv) Seller intentionally or knowingly delivers, or attempts to deliver, Distribution Services not produced by the Project;

(v) Seller fails to achieve the Initial Delivery Date, unless Seller Notifies Buyer of a Force Majeure Extension pursuant to Article Eight;

(vi) Seller fails to satisfy the Delivery Conditions by the applicable deadlines set forth in Section 2.2(b).

(vii) The Distribution Service performance for any month during the Delivery Term is less than (XX%) for any reason other than Force Majeure, below;

(viii) The results of a Performance Test show that the Project provides Distribution Services at less than one-hundred percent (100%) of the Contract Capacity set forth in Section 3.3 for any reason other than Force Majeure;

(ix) Seller fails to comply with Section 4.4(a) on more than one (1) day in the Delivery Term.

(b) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a "Party's Event of Default"):

(i) a Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy or other insolvency laws;

(ii) absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy or other insolvency laws, which in either case, is not dismissed within ninety (90) days;

(iii) a Party fails to pay an amount when due and such failure continues for ten (10) Business Days after Notice thereof is received by the Party failing to make such payment;

(iv) any representation or warranty made by a Party pursuant to Appendix XIII Section 1(a) or Article Fourteen is false or misleading in any material respect when made, if not cured within thirty (30) days after delivery of Notice from the other Party that

any material representation or warranty made in Appendix XIII Section 1(a) or Article Fourteen is false, misleading or erroneous in any material respect;

(v) a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving, or transferring entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an assumption agreement reasonably satisfactory to the other Party; or

(vi) a Party fails to perform any of its material obligations or covenants under this Agreement not otherwise addressed in this Section 7.1, and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) days after Notice specifying the failure is received; provided, however, that such period shall be extended for an additional reasonable period not to exceed one hundred twenty (120) days if cure cannot be effected in thirty (30) days and if corrective action, reasonably calculated to cure the default within a reasonable period of time, is instituted by the Defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected.

7.2. Early Termination.

(a) If and for as long as an Event of Default with respect to a Defaulting Party has occurred, the other Party (“Non-Defaulting Party”) has the right to (i) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 21.1) and no later than twenty (20) days after such Notice is deemed to be received (as provided in Section 21.1), as an early termination date of this Agreement (“Early Termination Date”), (ii) accelerate all amounts owing between the Parties, (iii) end the Term effective as of the Early Termination Date, (iv) collect the Termination Payment, (v) withhold any payments due to the Defaulting Party under this Agreement, (vi) suspend performance, and/or (vii) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement.

(b) In the event of early termination, the Non-Defaulting Party shall be entitled to a “Termination Payment” equal to (i) the Project Development Security if the Early Termination Date occurs prior to the Initial Delivery Date or (ii) the Delivery Term Security if the Early Termination Date occurs on or after the Initial Delivery Date.

(c) As soon as practicable after establishing the Early Termination Date, the Non-Defaulting Party shall Notify the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is owed to the Non-Defaulting Party. The Notice will include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Party that owes the Termination Payment shall make such payment to the other Party within ten (10) Business Days after such Notice is effective.

(d) If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be resolved in accordance with Article Eighteen.

7.3. Rights and Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Seven are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement; provided that the Termination Payment will be the Non-Defaulting

Party's sole remedy for damage in the event of the early termination of this Agreement and the Defaulting Party shall owe such amount without duplication to any other damages sustained by the Non-Defaulting Party. In no event shall the Defaulting Party owe the Non-Defaulting Party under different provisions of this Agreement for the same damages, claims, losses, liabilities or expenses.

7.4. Waiver. The Non-Defaulting Party will be deemed to have waived its rights to declare an Early Termination Date and to demand remedies under Section 7.2 if the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) days of the date on which the Event of Default becomes known, or reasonably knowable, to the Non-Defaulting Party; provided, however, that the time period for providing Notice of an Early Termination Date and a demand for remedies will not be deemed waived if (a) the Defaulting Party has consented to an extension of time or (b) the Non-Defaulting Party has provided Notice of the Event of Default and the Defaulting Party has represented that it is seeking to cure and the delay in providing such Notice is in reliance by the Non-Defaulting Party on the good faith attempt by the Defaulting Party to cure. A Party may not withhold payments or suspend performance under Section 7.2 for a period of more than twenty (20) Business Days unless an Early Termination Date has been declared, and Notice thereof given, in accordance with Section 7.2.

ARTICLE 8. FORCE MAJEURE

8.1. Force Majeure.

(a) Effect of Force Majeure. A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure event, and the non-affected Party shall be excused from its corresponding performance obligations for the period of the affected Party's failure or delay of performance. The burden of proof for establishing the existence and consequences of an event of Force Majeure lies with the Party initiating the claim.

(b) Notice of Force Majeure. Within five (5) Business Days of the commencement of an event of Force Majeure, the Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation hereunder, shall provide the other Party with Notice in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and the effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure. Promptly, but in any event within ten (10) days after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such event of Force Majeure.

(c) Mitigation of Force Majeure. In addition to the requirements of Section 8.1(d) below if applicable the suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Initial Delivery Date as a result of a Force Majeure or a Force Majeure Extension as Notified by Seller in the case of Delivery Conditions

in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv) or 2.2(a)(v), in accordance with this Article Eight, then Sections 8.1(d) and (e) shall apply.

(d) Force Majeure Extension. Notwithstanding anything to the contrary in this Agreement, the Initial Delivery Date may be extended on a day for day basis in the event of Force Majeure (“Force Majeure Extension”).

(i) Seller’s claims for a Force Majeure Extension cannot cumulatively exceed thirty (30) days; and

(ii) In order to request a Force Majeure Extension, Seller shall provide Buyer with Notice of the requested Force Majeure Extension no later than sixty (60) days prior to the Initial Delivery Date, which Notice must clearly identify the Force Majeure Extension and the length of the Force Majeure Extension subject to the limitations in this Section 8.1(d); provided that if sixty (60) days prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(e) Failure to Achieve Initial Delivery Date after Force Majeure Extension. Buyer shall have the right, but not the obligation, to terminate this Agreement due to Seller’s failure to achieve the Initial Delivery Date due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) following a Force Majeure Extension.

(f) Force Majeure Failure. Subject to Section 8.1(a), Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following, each constituting a “Force Majeure Failure” if during the Delivery Term:

- (i) the Distribution Service performance for any calendar year during the Delivery Term averages less than (XX%) for any reason; or
- (ii) the Project is destroyed or rendered inoperable by an event of Force Majeure.

(g) Effect of Termination. If either Party exercises its termination right under Section 8.1(e) for Seller’s failure to achieve the Initial Delivery Date due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) following a Force Majeure Extension or Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.1(f), then the Delivery Term is terminated and the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in the Notice of termination, subject to each Party’s satisfaction of all of the final payment and survival obligations set forth in Section 1.1(a).

ARTICLE 9. PAYMENT AND NETTING

9.1. Billing and Payment. On or before the fifteenth (15th) calendar day following each month of the Delivery Term, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller or from Seller to Buyer (as applicable) under this Agreement, including, as applicable:

- (a) the Monthly Payment, and
- (b) other compensatory adjustments required by this Agreement, including adjustments for Governmental Charges.

9.2. Netting. If each Party is required to pay the other an amount in the same month pursuant to this Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Buyer is expressly authorized to set off from any of its payments hereunder an amount owed by Seller to Buyer in accordance with this Agreement.

9.3. Payment. Payment of all undisputed amounts owed shall be due by the tenth (10th) Business Day after receipt of invoice ("Monthly Payment Date"). Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date to but excluding the date the delinquent amount is paid in full.

9.4. Intentionally Omitted.

9.5. Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with the provisions of Article Eighteen (Dispute Resolution). Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date on which the payment is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent invoices, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is Notified in accordance with this Section 9.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred, the right to payment for such performance is waived.

ARTICLE 10. CREDIT AND COLLATERAL REQUIREMENTS

10.1. Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to Buyer, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year, if available, and (b) within sixty (60) days after the end of each of Buyer's first three fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for each accounting period, if available, prepared in accordance with Generally Accepted Accounting Principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on Buyer's website or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

10.2. Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles. Seller shall be deemed to have satisfied such delivery requirements if the applicable reports are publicly available on Seller's website or the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Buyer upon their completion and filing with the SEC.

10.3. Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Performance Assurance hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash-equivalent collateral and any proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Performance Assurance, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first- priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence, and during the continuation, of an Event of Default or an Early Termination Date, Buyer, as the Non- Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against the Performance Assurance or other collateral posted by Seller or its Affiliates with Buyer under another agreement, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Performance Assurance, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10.4. Performance Assurance.

(a) Performance Assurance. Seller agrees to deliver to Buyer Performance Assurance in a form acceptable to Buyer to secure its obligations under this Agreement, which Performance Assurance Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security. On the Effective Date, Seller shall post Project Development Security in the form of cash or letter of credit, equal to ***insert dollar amount equal to \$***.

(ii) Delivery Term Security. Within five (5) Business Days prior to the Initial Delivery Date, Seller shall post Delivery Term Security in the form of cash or letter of credit, in an amount equal to ***insert dollar amount equal to \$***. With Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security.

(iii) The amount of Performance Assurance required under this Agreement is not a limitation of damages. For the avoidance of doubt, Buyer has no obligation to post collateral under this Agreement.

(b) Use of Project Development Security. Buyer is entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date in accordance with Section 7.2(b).

(c) Return of Project Development Security. If, after the Initial Delivery Date, no damages are due and owing to Buyer under this Agreement, then Seller will no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less any amounts drawn in accordance with Section 2.4(a) unless Seller elects to apply the Project Development Security to the Delivery Term Security in accordance with Section 10.4(a)(ii). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Buyer's receipt and acceptance of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security posted pursuant to Section 10.4(a)(ii).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Performance Assurance, at the Interest Rate and on the Interest Payment Date. Buyer will transfer to Seller all accrued Interest Amount on the unused cash Performance Assurance in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XII (Notices).

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any Interest Amount due thereon pursuant to Section 10.4(d) above, to Seller promptly after the following has occurred: (i) the Term has ended, or subject to Section 7.2, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including the Termination Payment, indemnification payments or other damages are paid in full.

10.5. Letter of Credit. Performance Assurance provided in the form of a Letter of Credit (see Appendix X) is subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Ten, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either subsection 10.5(b)(A) or 10.5(b)(B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either subsections (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 10.5(b) above, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Ten.

(c) Notwithstanding the foregoing in Section 10.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on “credit watch” negative or developing by S&P, or is on Moody’s “watch list” under review for downgrade or uncertain ratings action (either a “Watch”), then Buyer may make a demand to Seller by Notice (“LC Notice”) to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch (“Substitute Letter of Credit”). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit (“Substitute Bank Period”).

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period (“Ineligible LC Bank Notice Period”) that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank (“Ineligible LC Bank”) and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer’s Notice to Cure pursuant to Section 10.5(b) and, if Seller fails to Cure, then the last paragraph in Section 10.5(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(d) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE 11. SAFETY

11.1. Safety. Seller shall comply at all times with the safety provisions set forth in Appendix XIII.

ARTICLE 12. GOVERNMENTAL CHARGES

12.1. Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

12.2. Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to Distribution Services, by reason of the execution, delivery, performance or enforcement of this Agreement or by reason of transactions contemplated by this Agreement, but not with respect to Buyer’s use of

Distribution Services after delivery by Seller, including any resales or transfers of the Product. If either Party is required by Law to remit or pay Governmental Charges which are the other Party's responsibility hereunder, the Party paying or remitting the other Party's Governmental Charges may deduct the amount of any such Governmental Charges from the sums due to the other Party under Article Six of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Law.

ARTICLE 13. LIMITATIONS

13.1. Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTIONS 15.1 THROUGH 15.6 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 14. REPRESENTATIONS; WARRANTIES; COVENANTS

14.1. Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that as of the Effective Date:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in the State of California and in all jurisdictions where the ownership of its properties or its operations require such qualification, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(b) except for receipt of CPUC Approval, in the case of Buyer, and the Governmental Approvals necessary to install, operate and maintain the Project, in the case of Seller, it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement, and the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;

(d) execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any lien upon its properties, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of any agreement to which it is a party or by which any of its respective properties is bound or affected;

(e) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(f) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(g) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(h) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code (as in effect as of the Effective Date of this Agreement);

(j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of Distribution Services as provided in this Agreement; and

(k) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

14.2. General Covenants. Each Party covenants that throughout the Term:

(a) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and qualified to conduct business in the State of California and in all jurisdictions where ownership of its properties or its operations require such qualifications, except where the failure to do so would not have a material adverse effect on its

financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;

(d) it shall follow all the rules set forth in Appendix A of the MUA Decision with respect to any energy storage Distributed Resources comprising the Project.

14.3. Covenants of Seller. Seller covenants to and for the benefit of Buyer that throughout the Delivery Term (unless another time period is specified):

(a) it will deliver Distribution Services to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person;

(b) it shall operate the Project during the Delivery Term in accordance with the Operating Parameters in Appendix II and the Safety Requirements; and

(c) it shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to the Project.

ARTICLE 15. INDEMNITIES AND INSURANCE

15.1. Indemnity by Seller.

(a) Seller shall release, defend, indemnify and hold harmless Buyer, its directors, officers, employees, agents, attorneys, representatives and Affiliates (“Buyer Group”) against and from any Indemnifiable Losses, which arise out of or relate to or are in any way connected with (i) the Seller’s delivery of Distribution Services to Buyer, (ii) Seller’s or its Affiliates’ ownership, development, construction, operation and/or maintenance of the Project, including the Unit(s) and Sites(s); (iii) Third Party Claims arising from Seller’s or its Affiliates’ actions or inactions, including Seller’s breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Project or Site; (iv) any environmental matters associated with the Project, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller’s direction or agreement; (v) Third Party Claims arising under any agreement between Seller or its Affiliates ; or (vi) resulting from Seller’s or its Affiliates’ violation of any applicable Law, or requirements of Utility Distribution Company, NERC, WECC or Reliability Organization; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller’s Affiliates, or others, excepting only such Indemnifiable Losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group.

(b) Seller shall indemnify, defend and hold the Buyer Group harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

15.2. No Indemnity by Buyer. Buyer does not indemnify Seller.

15.3. Notice of Claim.

(a) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article Fifteen, the Party seeking indemnification hereunder (the “Indemnitee”) will promptly Notify the Party against whom indemnification is sought (the “Indemnitor”) in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to an Indemnifiable Loss under Sections 15.1 or 15.2. (The Notice is referred to as a “Notice of Claim”). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the Indemnifiable Loss.

(b) Notice of Third Party Claim. If the Indemnitee receives Notice of the assertion or commencement of a Third-Party Claim against it with respect to which the Indemnitor is obligated to provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) days after such Indemnitee’s receipt of Notice of such Third-Party Claim. Such Notice of Claim will describe the Third-Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if reasonably practicable, the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving Notice to the Indemnitee, to assume the defense of any Third-Party Claim at such Indemnitor’s own expense and by such Indemnitor’s own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.

(c) Direct Claim. Any Direct Claim must be asserted by giving the Indemnitor Notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) days from receipt of such Notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty (60) day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.

(d) Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 15.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.4. Defense of Third Party Claims. If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to the Indemnitor pursuant to Section 15.3(b), the Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 15.3(b), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) days after receiving Notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable

Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee acknowledge fault or culpability. If a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give Notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such Notice.

15.5. Subrogation of Rights. Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, the Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

15.6. Rights and Remedies are Cumulative. The rights and remedies of a Party pursuant to this Article Fifteen are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

15.7. Insurance. Throughout the Term, Seller shall, at its sole cost and expense, procure and maintain the following insurance coverage and be responsible for its Contractors maintaining sufficient limits of the appropriate insurance coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.7 constitute a material obligation of this Agreement.

(a) Workers' Compensation Employer's Liability.

(i) In accordance with the laws of the State(s) in which the Seller performs work, Seller shall maintain in force workers' compensation insurance for all of its employees.

(ii) Employer's Liability insurance will not be less than one million dollars (\$1,000,000.00).

(b) Commercial General Liability.

(i) Coverage shall be at least as similar to or broad as the Insurance Services Office Commercial General Liability Coverage. Such insurance shall include coverage for products/completed operations, broad form/blanket contractual liability for written contracts, property damage and personal injury liability, premises/operations, independent contractor liability,

and pollution (including hostile fire) liability. Defense costs shall be provided as an additional benefit and may be included within the limits of liability. Such insurance will have no wildfire, explosion, collapse, or underground exclusions. Coverage limits may be satisfied using an umbrella or excess liability policy that satisfies the requirements of this Article.

(ii) The limit will not be less than two hundred million dollars (\$200,000,000.00) each occurrence. Coverage limits may be satisfied using an umbrella or excess liability policy.

(c) Business Auto.

(i) Coverage will be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto."

(ii) The limit will not be less than one million dollars (\$1,000,000.00) each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage will be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Seller's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will not be less than five million dollars (\$5,000,000.00) each occurrence for bodily injury and property damage.

(iii) The policy will endorse SDG&E as additional insured.

(e) Cyber Liability.

(i) Cyber risk insurance including coverage arising from network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyright, trademark, service mark and trade dress and interruption of or damage to SCADA systems. No exclusions shall be listed within the policy for unencrypted or portable devices. Notwithstanding any other provision of this Agreement, such policy shall remain in place during the Term, including any applicable maintenance period. Policy or policies shall also explicitly include all Contractor Parties. In the event of loss under this coverage, Contractor shall notify Company no later than 24 hours after discovery of any breach and will provide Company with access to data.

(ii) The limit will not be less than one million dollars (\$1,000,000.00) each occurrence for bodily injury and property damage.

(f) Additional Insurance Provisions.

(i) Additional Insured Buyer and its parent company, and its subsidiaries, affiliates and their respective officers, directors, and employees, shall be named as additional insureds by applicable endorsement for all policies listed in this Article except for Workers' Compensation and Professional Liability. In the event the policies include a "blanket additional insured endorsement where required by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "its parent, its affiliates, and each of their respective directors, officers, agents and employees are included as additional insured with respect to liability arising out of the work performed by Seller or any of its subcontractors." The Commercial General Liability insurance policy shall include (a) a severability of interest or cross-liability clause, and (ii) additional insured endorsements evidencing ongoing and completed operations endorsements – ISO forms CG2010 and CG2037, or their equivalent.

(ii) Waiver of Subrogation Each policy of insurance required to be obtained and maintained by Seller as described herein shall contain a waiver of subrogation in favor of the Buyer.

(iii) Primary and Non-contributory The required policies, and any of Seller's policies providing coverage excess of the required policies, shall provide that the coverage is primary for all purposes and Seller shall not seek any contribution from any insurance or self-insurance maintained by Buyer.

(iv) Seller shall be solely responsible for any deductible or self-insured retention on insurance required hereunder this Agreement.

(v) Prior to the effective date, and thereafter during the Term of the Agreement, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller and its Contractors.

(vi) The insurance documentation will state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to Buyer. In the event of cancellation of any coverage, such insurance shall be replaced with equivalent coverage and without any gap in coverage.

(vii) All required policies of insurance must be written by companies having an A.M. Best rating of "A-, VII" or better, or equivalent.

ARTICLE 16. RECORDS AND AUDIT RIGHTS

16.1. Operations Logs. Seller shall maintain a complete and accurate log of all material operations as set forth in Appendix XIV. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's written request. At the request of Buyer, the CPUC, or the staff of the CPUC, Seller shall provide all records demonstrating that the Project is operated and maintained in accordance with all applicable Laws.

16.2. Records and Audit.

(a) Records and Audit. Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Seller shall provide access to financial records and personnel required by Buyer to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Delivery Term all within forty-five (45) days after the end of each fiscal quarter:

(i) Seller's unaudited financial statements and notes to financial statements; and

(ii) financial schedules underlying the financial statements.

(b) Any information provided to Buyer pursuant to this Section 16.2 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other entities for which Buyer has similar agreements. Buyer shall use this information only for financial statement purposes and shall share such information with (i) internal or external parties or (ii) regulatory, administrative or legal entities or authorities only as necessary in connection with the preparation and audit of Buyer's financial statements.

(c) The Parties shall, for five (5) years after creation or such longer period as may be required by applicable Law, each keep and maintain accurate and detailed records relating to the Project's deliveries of Distribution Services and such other information as required to support the amounts due and payable as between the Parties pursuant to this Agreement. Such records shall be made available by the Party holding such records to the other Party for inspection during normal business hours upon reasonable Notice.

16.3. General Audit Right. Each Party has the right, at its sole expense, during normal working hours, and after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement (including the Project Safety Plan or other documents that supplement this Agreement), charge, or computation made pursuant to this Agreement. If such examination reveals any inaccuracy in any statement, the necessary adjustments shall be made promptly; provided that, if the examining Party raises its objection more than twelve (12) months after the date of the statement in question, that objection shall be deemed waived.

16.4. Data Request Cooperation. Each Party shall use reasonable efforts to assist the other Party in gathering information for and preparing responses to data requests and other inquiries from Governmental Authorities that are related to or associated with the Project, delivery of Distribution Services and/or this Agreement, subject to the requirements of Article Nineteen.

16.5. Access Rights. Buyer, its authorized agents, employees and inspectors, have, while observing safety and security procedures of the Parties and Seller's Affiliate, and subject to the insurance requirements of Section 15.7, the right of ingress to and egress from the Project, including the Site(s) with reasonable advance Notice and for any purposes reasonably connected with this Agreement. Buyer shall make reasonable efforts to request from Seller access during normal business hours and to coordinate its emergency activities with the safety and security departments, if any, of the Project operator and/or Seller's Affiliate. Seller shall keep Buyer advised of current procedures for contacting the Project operator's and/or Seller's Affiliate safety and security departments.

ARTICLE 17. ASSIGNMENT

17.1. General Assignment. Neither Party will assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent will not be unreasonably conditioned, delayed, or withheld so long as (a) the assignee assumes the transferring Party's payment and performance, credit and collateral obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, (d) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request, and (e) in

the case of Seller as the transferring Party with a transfer to an assignee that will have operational control of the Project, Seller delivers to Buyer, upon Buyer's request, documentation to demonstrate the assignee is capable of satisfying and complying with the Safety Requirements.

17.2. Assignment to Financing Providers. Seller may assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent will not be unreasonably conditioned, delayed, or withheld. If Buyer gives its consent, then the consent will be in a form substantially similar to the Form of Consent to Assignment attached as Appendix XV provided that (a) Buyer will not be required to consent to any additional terms or conditions beyond those contained in Appendix XV, including extension of any cure periods or additional remedies for financing providers, and (b) Seller is responsible, at Buyer's request, for Buyer's reasonable costs and attorneys' fees associated with the review, negotiation, execution and delivery of documents in connection with such assignment.

17.3. Assignment in Connection with a Change in Control. Any direct change of control of Seller or Seller's Parent (whether voluntary or by operation of Law) is deemed an assignment and shall require the prior written consent of Buyer which consent shall not be unreasonably conditioned, delayed or withheld, provided that the requirements identified in Section 17.1(a) through (e) are met. Seller shall use commercially reasonable efforts to provide Buyer (a) Notice at least ten (10) days prior to the effectiveness of any indirect change in control, and shall in any event provide such Notice no later than ten (10) Business Days after the indirect change in control, and (b) such other information as Buyer may reasonably request in connection with such change in control.

17.4. Unauthorized Assignment. Any assignment or purported assignment in violation of this Article Seventeen is void.

ARTICLE 18. DISPUTE RESOLUTION

18.1. Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article Eighteen. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of this procedure.

18.2. Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) calendar days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(d) If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Subsection 18.2(b), refuses or does not meet within the thirty (30) calendar day period specified in Subsection 18.2(b), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 18.3.

18.3. Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 18.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by JAMS. As the first step the Parties agree to mediate any controversy before a mediator from the JAMS panel, pursuant to JAMS's commercial mediation rules, in San Diego, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a retired judge or justice from the JAMS panel conducted in San Diego, California, administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. If the dispute is not resolved within sixty (60) days of service of the written demand for mediation, then either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within five (5) days following the end of the mediation period.

18.4. Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the County of San Diego may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994), and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(d) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him.

(e) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

ARTICLE 19. CONFIDENTIALITY

19.1. Confidential Information. Throughout the Term, neither Party shall disclose the non-public terms or conditions of this Agreement or the Parties' bidding or negotiation process or any technical, commercial, or operating information marked as proprietary or confidential (the "Confidential Information") to a third party.

19.2. Permitted Disclosures. A Party may disclose Confidential Information: (a) to the Party's Affiliates and the Party's and its Affiliate's employees, counsel, accountants, advisors, lenders, or equity investors who have a need to know such information and have agreed to keep such terms confidential; (b) to Buyer's Procurement Review Group, as defined in CPUC Decision (D.) 02-08-071 and made applicable to this Agreement by D.04-06-015, subject to a confidentiality agreement; (c) to the CPUC (including CPUC staff) under seal for purposes of review (if such seal is applicable to the nature of the Confidential Information); (d) pursuant to Section 19.4; (e) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (f); (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC; or (g) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to a duly authorized Governmental Authority including the CPUC or any division thereof.

(i) Procedure for Permitted Disclosures. In connection with requests made pursuant to Section 19.2(e) ("Disclosure Order") and disclosures pursuant to Sections 19.2(e) or 19.2(f) ("Regulatory Disclosure") each Party shall, to the extent practicable, use reasonable efforts to: (A) notify the other Party prior to disclosing the Confidential Information and (B) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (I) prohibited from complying with a Disclosure Order or making the Regulatory Disclosure or (II) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information.

19.3. Remedies. Except as provided in Section 19.2 with respect to the Parties' permitted disclosures, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

19.4. Exceptions.

(a) Notwithstanding Section 19.1 of this Agreement, any time on or after the date on which Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose those terms required to be made public by the CPUC in its then-current application or advice- letter template, as applicable, including the following: Party names, resource type, Delivery Term, Project location, terms relating to the capacity of the Project, and anticipated Commercial Operation Date. Seller acknowledges and agrees that the CPUC may require the public disclosure of this Agreement prior to the termination of the confidentiality protections and that Buyer shall be held harmless with respect to such disclosure.

(b) In addition to the disclosures of Confidential Information permitted under Section 19.2, Seller is permitted to disclose Buyer's Contractor Safety Program Standards to Contractors.

19.5. Other Confidential Information. The Parties agree that the confidentiality provisions under this Article Nineteen are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Article Nineteen shall govern confidential treatment of all non-public information exchanged between the Parties related directly or indirectly to this Agreement as of and after the Effective Date.

ARTICLE 20. GENERAL PROVISIONS

20.1. General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will provide the original signed Agreement; provided, however, that the execution and delivery of this Agreement and its counterparts is subject to Section 20.3. The Parties acknowledge and agree that this Agreement is a forward contract (within the meaning of the Bankruptcy Code, as in effect as of the Effective Date). This Agreement shall be binding on each Party's successors and permitted assigns.

20.2. Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

20.3. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same

Agreement. Delivery of an executed counterpart of this Agreement by e-mail will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by e-mail will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

20.4. Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

20.5. Interpretation. The following rules of interpretation apply:

(a) The term “including” means “including without limitation”; the terms “year” and “calendar year” mean the period of months from January 1 through and including December 31; the term “month” means a calendar month unless otherwise indicated, and a “day” means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends, respectively.

(b) Unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed.

(c) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies unless otherwise specified.

(d) Capitalized terms used in this Agreement, including the appendices hereto, have the meaning set forth in Appendix I, unless otherwise specified.

(e) References in the singular include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons include partnerships, firms, companies, corporations, limited liability companies, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(f) Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. Words referring to market rules, activities and practice have the meaning generally ascribed to such words in California.

(g) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment will, unless specified otherwise, be a reference to that

article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(h) Any reference in this Agreement to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity succeeding to its functions.

(i) All references to dollars or “\$” are to U.S. dollars.

(j) When an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific prevailing time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day.

(k) All references to Distribution Services mean each and all components of Distribution Services unless the context infers a particular component of Distribution Services.

20.6. Recordings. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of an electronic recording of all telephone conversations between the Parties to this Agreement related to the scheduling of any Distribution Services, and that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, subject to the confidentiality provisions of Article Nineteen. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the recordings pursuant to this Agreement.

20.7. Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to make or receive other Notices on behalf of such Party or to represent a Party (“Authorized Representative”) and in connection with such Notices and specify the scope of their individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time in its sole discretion by providing Notice.

20.8. No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other Party under any provision of this Agreement shall constitute the dedication of that Party’s system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

20.9. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 21. NOTICES

21.1. Notices. Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “Notify”), the Party with such right or obligation shall provide a written communication in the manner specified below. Notices may be sent by overnight mail or courier or e-mail. Invoices may be sent by e-mail. A Notice sent by e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Appendix XII contains the names and addresses to be used for Notices.

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SIGNATURES

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its
Authorized
Representative as of the dates provided below:

_____[Seller],
A _____ company

**SAN DIEGO GAS AND ELECTRIC
COMPANY, a California corporation**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I

GENERAL DEFINITIONS

“Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, through one or more intermediaries, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

“Agreement” means this Distribution Services Agreement, and, together with each and every appendix, attachment, amendment, schedule and written supplement hereto, to the extent those are executed by the Parties, constitutes the entire agreement of the Parties as to the matters set forth herein.

“Arbitration” has the meaning set forth in Section 18.3.

“Authorized Representative” has the meaning set forth in Section 20.7.

“Balancing Authority” has the meaning set forth in the CAISO Tariff.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Business Day” means any day except Saturday, Sunday, or a Federal Reserve member bank holiday.

“Buyer” means SDG&E in its capacity as a purchaser of Distribution Services and other merchant functions, as distinct from the function of SDG&E as a Utility Distribution Company.

“Buyer Group” has the meaning set forth in Section 15.1.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

“CARB” means the California Air Resources Board or any successor entity performing similar functions.

“CEC” means the California Energy Commission or any successor entity performing similar functions.

“Commercially Operable” with respect to the Project, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, and the Project has been released by the EPC Contractor to Seller for commercial operations.

“Commercial Operation Date” means the date stated in Seller’s Notice, substantially in the form of Appendix VI, upon which the Project became Commercially Operable.

“Communications Systems” has the meaning set forth in Section 4.7.

“Contractor” means the EPC Contractor and its subcontractors, as well as Seller or Seller’s Affiliates if any such entities are developing, constructing, operating or maintaining the Project during the Term, and any entity or person under contract with Seller or Seller’s Affiliates for the purpose of developing, constructing, operating or maintaining the Project during the Term.

“Contractor Safety Program Standards” has the meaning set forth in Appendix XIII.

“Contract Capacity” has the meaning set forth in Section 3.3.

“Contract Price” means the amount specified in Section 6.1.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party 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 all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“CPUC” or “Commission” means the California Public Utilities Commission or any successor entity performing similar functions.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, pursuant to which the CPUC approves of this agreement in its entirety, including payments to be made by the Buyer and such other matters as may be requested by Buyer in its application to the CPUC for approval, subject to CPUC review of the Buyer’s administration of the Agreement. CPUC Approval will be deemed to have occurred on the first day it can be legally determined that a final CPUC order containing such findings has become non-appealable.

“CPUC General Order 167” issued by the CPUC directs the implementation and enforcement of standards for the maintenance and operation of electric generating facilities and power plants and can be found at the link below:

http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/108114.htm

“Credit Rating” means, with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit

enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

"Critical Milestone" is a milestone identified in Appendix V.

"Cure" has the meaning set forth in Section 10.5(b).

"Customer" means a Person that (i) is located in Buyer's Service Territory, (ii) has load connected to one or more of the feeders set forth in Appendix III, and (iii) has an effective Service Agreement.

"Defaulting Party" means the Party that is subject to an Event of Default.

"Delivery Condition" has the meaning set forth in Section 2.2(a).

"Delivery Month" means a calendar month during the Delivery Term.

"Delivery Point(s)" has the meaning set forth in Section 3.4 and selected in Appendix III.

"Delivery Term" has the meaning set forth in Section 1.1(b).

"Delivery Term Security" means the Performance Assurance required of Seller, as specified and referred to in Section 10.4(a).

"Direct Claim" means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third-Party Claim.

"Disclosing Party" has the meaning set forth in Section 19.2.

"Disclosure Order" has the meaning set forth in Section 19.2.

"Distributed Resource" has the meaning given to the term in California Public Utilities Code Section 769.

"Distribution Hosting Capacity" has the meaning set forth in Appendix II.

"Distribution Load Capacity" has the meaning set forth in Appendix II.

"Distribution Services" has the meaning set forth in Section 3.2.

"Early Termination Date" has the meaning set forth in Section 7.2(a).

"Effective Date" has the meaning set forth in the introductory paragraph of this Agreement.

"Electric Revenue Meter" means the measurement device(s) used by SDG&E to measure deliveries of Energy at the Delivery Point for purposes of billing.

"Electric System Upgrades" means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO

Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Project to the Utility Distribution Company's electric system for delivery of Energy from the Project.

"Eligible LC Bank" means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) "A, with a stable designation" from S&P and "A3, with a stable designation" from Moody's, if such bank is rated by both S&P and Moody's; or (b) "A-, with a stable designation" from S&P or "A3, with a stable designation" from Moody's, if such bank is rated by either S&P or Moody's, but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

"Emergency" means an actual or imminent condition or situation, that jeopardizes SDG&E electric system integrity or the integrity of other systems to which SDG&E is connected, as determined by SDG&E in its sole discretion.

"Emission Reduction Credits" means emission reductions that have been authorized by a local air pollution control district pursuant to California Health and Safety Code, Division 26 Air Resources, Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

"Energy" means electric energy measured in kw-hours.

"Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for Distribution Services as defined in this Agreement with Seller, and Seller's compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license with respect to Seller's Distribution Services or Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits, Marketable Emission Trading Credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate the Project, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Project by Seller or Contractors, and the decontamination or remediation, on or off a Site or the Project, necessitated by the introduction of such hazardous substances on a Site or the Project by Seller or Contractors.

"EPA" means the U.S. Environmental Protection Agency or any successor entity performing similar functions.

"EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

"EPC Contractor" means Seller's engineering, procurement and construction contractor or such Person performing those functions.

"Equitable Defenses" means any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Event of Default” means a Seller’s Event of Default and/or a Party’s Event of Default.

“Execution Date” means the latest signature date found on the signature age of this Agreement.

“Executive” has the meaning set forth in Section 18.2(a).

“Exigent Circumstance” means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Project or portion thereof.

“FERC” means the Federal Energy Regulatory Commission or any successor entity performing similar functions.

“Force Majeure” means any event or circumstance to the extent beyond the control of and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Additionally:

(a) Force Majeure may include:

(i) acts of God, including landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather-related events affecting an entire region which caused failure of performance;

(ii) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Commercial Operation Date;

(iii) sabotage, riot, acts of terrorism, war and acts of public enemy; or

(iv) restraint by court order or other Governmental Authority.

(b) Force Majeure does not include: **[NOTE: Definition may need to be updated to reflect Project specifics.]**

(i) a failure of performance of any Third Party or SDG&E acting in its capacity as (A) Participating TO or (B) Utility Distribution Company, including any party providing electric interconnection, distribution or transmission service,

(ii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above);

(iii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other Third Party employed by Seller to work on the Project;

(iv) Seller’s ability to sell Distribution Services at a price greater than the price set forth in this Agreement;

(v) Seller's inability to obtain permits or approvals of any type for the construction, operation or maintenance of the Project, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) Seller's inability to complete interconnection by the applicable Initial Delivery Date, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vii) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; and

(viii) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement.

(ix) Seller's inability to obtain or retain any Site that is a part of the Project.

"Force Majeure Extension" has the meaning set forth in Section 8.1(d).

"Force Majeure Failure" has the meaning set forth in Section 8.1(e).

"Generally Accepted Accounting Principles" means the standards for accounting and preparation of financial statements established by the Financial Accounting Standards Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

"Governmental Approval" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Project.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Governmental Charges" has the meaning set forth in Section 12.2.

"Hazardous Substance" means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant" or "pollutant" or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls ("PCBs"), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

"Indemnifiable Loss(es)" means any damages, claims, losses, liabilities, obligations, fines, penalties, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

“Indemnatee” means the Buyer Group.

“Indemnitor” means the Seller Group.

“Ineligible LC Bank” has the meaning set forth in Section 10.5(c)(i)(A).

“Ineligible LC Bank Notice Period” has the meaning set forth in Section 10.5(c)(i).

“Initial Delivery Date” has the meaning set forth in Section 1.1(b).

“Initial Negotiation End Date” has the meaning set forth in Section 18.2(a).

“Interconnection Agreement” means the agreement and associated documents (or any successor agreement and associated documentation approved by the CPUC) by and among Seller and the Utility Distribution Company governing the terms and conditions of the interconnection of the Project with the Utility Distribution Company’s grid, including any description of the plan for interconnecting the Project to the applicable grid.

“Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

“Interest Payment Date” means the date of returning unused Performance Assurance held in the form of cash.

“Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.

“Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

“JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

“kW” means kilowatts.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Term; or any binding interpretation of the foregoing.

“LC Notice” has the meaning set forth in Section 10.5(c).

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix X to this Agreement; provided, that if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of

Credit amount exceeding ten million dollars (\$10,000,000.00) requires Buyer's prior written consent.

"Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

"Manager" has the meaning set forth in Section 18.2(a).

"Marketable Emission Trading Credits" means without limitation, emissions trading credits or units pursuant to the requirements of California Health & Safety Code Division 26 Air Resources, Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. §7651b.(a) to (f)).

"Mechanical Completion" means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; and (b) the Project is ready for testing and commissioning, as applicable.

"Meter Service Agreement" has the meaning set forth in the CAISO Tariff.

"Monthly Payment" has the meaning set forth in Section 6.2.

"Monthly Payment Date" has the meaning set forth in Section 9.3.

"Moody's" means Moody's Investors Service, Inc., or its successor.

"MUA Decision" means CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities.

"MW" means megawatts.

"NERC" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

"Non-Defaulting Party" has the meaning set forth in Section 7.2(a).

"Notice" unless otherwise specified in this Agreement, means a written communication which is delivered by overnight courier service or electronic messaging (e-mail), and in the manner required by Section 21.1, as applicable to a given communication.

"Notice of Claim" has the meaning set forth in Section 15.3(a).

"Notify" means to provide a Notice.

"Operating Parameters" shall mean the parameters set forth in Appendix II.

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

“Party” or “Parties” has the meaning set forth in the preamble of this Agreement.

“Party’s Event of Default” has the meaning set forth in Section 7.1(b).

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes Project Development Security and Delivery Term Security. Buyer only accepts two forms of collateral to satisfy the Performance Assurance obligations: (a) cash via wire transfer in immediately available funds, or (b) a Letter of Credit.

“Performance Test” has the meaning set forth in Section 5.1(a), and includes Buyer Performance Tests and Seller Retests.

“Permit” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“Plan Extension” has the meaning set forth in Appendix XIII Section 2(a)(i).

“Product” means the Distribution Services set forth in Appendix II Section 1.

“Project” means all Distributed Resources, together with all appurtenant facilities and equipment, including any control and Communication Systems, necessary to provide Distribution Services as depicted in Appendix III. Resources that compose the Project must be Distributed Resources and may be in front of or behind a Customer’s retail meter.

“Project Development Security” is the Performance Assurance required of Seller, as specified and referred to in Section 10.4(a)(i).

“Project Safety Plan” means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements and shall include the items that are generally outlined in Appendix XVI.

“Project Safety Plan Documents” means that information and documentation listed in Appendix XVI.

“Protocol” has the meaning set forth in Section 19.2.

“Prudent Electrical Practices” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to resources

composing the Project during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

Prudent Electrical Practices also includes taking reasonable steps to ensure that:

- (a) Safeguards are implemented and maintained for the Project and at each Site and are sufficient to address reasonably foreseeable incidents;
- (b) equipment, material, and supplies are sufficient and accessible to operate the Project safely and reliably;
- (c) operating personnel are trained, equipped, and capable of responsible operation and maintenance of the Project and at each Site, including identifying and responding to System Emergencies, Emergencies, or Exigent Circumstances originating from or impacting the Project or Site;
- (d) the Project's material components and control systems are designed, manufactured, and configured to meet the standard of durability and safety generally used for electric power operating in the relevant region; and
- (e) the Project is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistent with the intended design specifications, applicable Laws, and Permits, and over the complete range of environmental conditions reasonably expected to occur at each Site.

"Referral Date" has the meaning set forth in Section 18.2(a).

"Regulatory Disclosure" has the meaning set forth in Section 19.2(i).

"Reliability Organization" means an "Electric Reliability Organization" as defined in Section 215(a)(2) of the Federal Power Act or a "regional entity" as defined in Section 215(a)(7) of the Federal Power Act.

"Reliability (Back-Tie) Services" has the meaning set forth in Appendix II Section 1.

"Remediation Event" means the occurrence of any of the following with respect to the Project or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Project's operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Appendix XIII Section 2, in its sole discretion, that the Seller, the Project Safety Plan, Safety Attestation, as applicable, is not consistent with the Safety Requirements; or (g) any actual condition related to the Project or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Project or a Site.

“Remediation Period” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days unless extended pursuant to Appendix XIII Section 4.

“Restricted Period” has the meaning set forth in Appendix II.

“S&P” means Standard and Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Safeguard” means any procedures, practices, or actions with respect to the Project, a Site or Work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

“Safety Attestation” means a written attestation or certification from a Licensed Professional Engineer substantially in the form attached hereto as Appendix VII.

“Safety Remediation Plan” means a written Notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller’s plans to resolve the Remediation Event.

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Standards, and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC.

“SDG&E Tariff” means the tariff schedules applicable to retail electric service (including unbundled delivery service) of SDG&E on file with the CPUC, including all associated preliminary statements, rate schedules and electric rules, as they may be amended, suspended or replaced from time to time.

“SEC” means the U.S. Securities and Exchange Commission, or any successor entity performing similar functions.

“Seller” is the entity named in the preamble to this Agreement.

“Seller Group” means Seller, its directors, officers, agents, attorneys, representatives and Affiliates.

“Seller’s Event of Default” has the meaning set forth in Section 7.1(a).

“Seller’s Parent” means any entity or Person that directly holds fifty percent (50%) or more of the equity interests in Seller.

“Serious Incident” means a harmful event that occurs on a Site during the Term arising out of, related to, or connected with the Project or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to Project operating personnel, Seller’s Contractors or subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than one hundred thousand dollars (\$100,000.00); (d) release of hazardous material above the limits, or violating the requirements, established by Permits, codes, standards, regulations, Laws or Governmental Authorities; (e) environmental impacts exceeding those authorized by Permits or applicable Law.

“Service Agreement” means an agreement denoted by a unique service identification number between Buyer, in its function as Utility Distribution Company, and a person or entity for electric distribution service under the SDG&E Tariff.

“Service Territory” means the geographic area within which SDG&E as a Utility Distribution Company is authorized and required to provide electric distribution service.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Site(s)” means the real property or properties on which one or more Distributed Resources comprising the Project is located, as identified in Appendix III and as may be updated from time to time in accordance with Section 4.5.

“Site” has the meaning set forth in Section 4.5(b).

“Substitute Bank Period” has the meaning set forth in Section 10.5(c).

“Substitute Letter of Credit” has the meaning set forth in Section 10.5(c).

“Term” has the meaning set forth in Section 1.1(a).

“Termination Payment” has the meaning set forth in 7.3.

“Third Party” means a Person that is not a member of the Buyer Group or the Seller Group.

“Third-Party Administrator” means the Third Party used to collect and verify safety pre-qualification pursuant to Buyer’s Contractor Safety Program Standards. As of the Execution Date of this Agreement, SDG&E’s Third-Party Administrator is ISNetwork.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

“Third Party Sales” has the meaning set forth in Section 3.1.

“Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

“Transmission Provider” means the CAISO.

“Utility Distribution Company” means SDG&E.

“Watch” has the meaning set forth in Section 10.5(c).

“WECC” means the Western Electricity Coordinating Council or its successor entity with similar functions.

“Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations.

APPENDIX II

DISTRIBUTION SERVICES TYPE(S) AND CONTRACT CAPACITY

1. Distribution Services Type(s).

Distribution Services shall consist of the Project's ability to provide, and the provision of, one or more of the following services that are checked as applicable:

☐ Distribution Capacity Services: which is provided by decreasing net loading on distribution infrastructure during the Operating Parameters through decreasing electrical consumption or increasing generation, in accordance with the Operating Parameters set forth below to mitigate thermal overload conditions and ensure local distribution safety and reliability;

☐ Voltage Support Services:

☐ Reliability (Back-Tie) Services: which is provided by decreasing net loading on distribution infrastructure through decreasing electrical consumption or increasing generation, in accordance with the Operating Parameters set forth below to reduce thermal loading for local distribution safety and reliability operations (e.g. emergency and planned switching)

☐ Resiliency (Microgrid) Services:

2. Contract Capacity.

The Contract Capacity is the amounts specified in Section 3 (Operating Parameters) by Delivery Year, Delivery Month, Delivery Days, and Delivery Hours:

3. Operating Parameters.

a. The Operating Parameters for the Distribution Capacity Services of the Project are:

Project must deliver the day-ahead scheduled Contracted Capacity (in the Delivery Year) for the delivery periods below.

Delivery Years: *[Example: 2022 -2026]*

Delivery Months: *[Example: June – October]*

Delivery Days: *[Example: all days]*

Delivery Hours: *[Example times provided]*

☐ *1:00 pm to 12:00 am (midnight)*

Minimum duration the Project must be able to deliver: *[Example times provided]*

☐ *11 hours]*

- b. The Operating Parameters for the Reliability (Back-Tie) Services of the Project are:
Project must deliver the maximum Contracted Capacity as described below.

[To be determined]

5. Restricted Periods.

To prevent grid reliability problems as described below, the operation of the Project must not be during the following periods (“Restricted Periods”):

Months:

Days:

Hours:

Description and location of grid reliability problems:

[to be determined]

APPENDIX III

DESCRIPTION OF PROJECT & UNITS

The following describes the Project to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

☐ Generation

☐ Energy Storage

***[EACH PROJECT DESCRIPTION TO BE DEVELOPED TO DEPICT RESOURCES,
INTERCONNECTION POINTS, AND INITIAL SITE LIST AND/OR CUSTOMER LIST]***

The resources that compose the Project shall each be interconnected to circuits or loads or associated with load facilities that are electrically interconnected to one or more of the following:

[to be inserted.]

The Project's Communications Systems shall be designed and installed as follows:

[to be inserted.]

APPENDIX IV

INITIAL DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Distribution Services Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), and Section 2.2 of that Agreement, this letter (“Initial Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that the Delivery Conditions to the Initial Delivery Date have been satisfied or waived in writing by Buyer. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Additionally, Seller provides the following FERC Tariff information, if applicable, for reference purposes only:

Tariff:

Dated:

Docket Number:

IN WITNESS WHEREOF, each Party has caused this Initial Delivery Date Confirmation Letter to be duly executed by its Authorized Representative as of the date of last signature provided below:

/[INSERT SELLER’S NAME HERE]

**SAN DIEGO GAS AND
ELECTRIC COMPANY**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX V

CRITICAL

MILESTONES

[Note to Seller: Seller shall select the Project type offered and designate the month, date, year for compliance with the Critical Milestone.]

Each Critical Milestone is subject to extension for delays as a result and to the extent of Force Majeure, as described in Section 8.1(d).

[SDG&E has provided examples for different types of Projects.]

[] In Front of the Meter generation

- Site Control:
- Interconnection Agreements:
- Safety Plan:
- Construction Start:
- Performance Test:
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Contract Capacity
- Commercial Operation:

[] In Front of the Meter Storage

- Site Control
- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Contract Capacity
- Commercial Operation

APPENDIX VI

CERTIFICATION FOR COMMERCIAL OPERATION

This certification of commercial operation ("Certification") is delivered by _____ ("Seller") to San Diego Gas and Electric Company ("Buyer") in accordance with the terms of that certain Distribution Services Agreement dated ***[INSERT DATE]*** ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) The Project became Commercially Operable on ***[INSERT DATE]***.
- (2) The Project has been constructed in accordance with Appendix III.
- (3) The Project is capable of producing and delivering the Distribution Services at the Contract Capacity.
- (4) Seller has designed the Project to perform for the Delivery Term.
- (5) The design, construction, or operations of the Project was carried out by a qualified organization.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided to certify as to the statements in this Certification and Section 2.1(c) of the Agreement.

EXECUTED by SELLER this _____ day of _____, 20__.

[INSERT SELLER'S NAME HERE]

Signature: _____

Name: _____

Title: _____

Date: _____

[Licensed Professional Engineer]_____

Signature: _____

Name: _____

Title: _____

Date: _____

License Number and LPE Stamp _____

**APPENDIX
VII**

SAFETY ATTESTATION

This Safety Attestation is delivered by _____ (“Licensed Professional Engineer”) to San Diego Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Distribution Services Agreement dated (“Agreement”) by and between (“Seller”) and Buyer. All capitalized terms used in this Safety Attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Licensed Professional Engineer _____ hereby certifies the following:

- (1) The Project is able to operate in a manner consistent with the Safety Requirements;
- (2) The Project Safety Plan demonstrates compliance with all applicable Safety Requirements and reasonably takes into account the items in Appendix XVI to the Agreement; and
- (3) If a Remediation Event has occurred, Seller has taken into account its Safety Remediation Plan for the Project and the applicable Site(s).

[Licensed Professional Engineer] _____

Signature: _____

Name: _____

Title: _____

Date: _____

License Number and LPE Stamp

APPENDIX VIII

METERING, MEASUREMENT, VERIFICATION AND PERFORMANCE TESTING

1. Metering:

[] In Front of the Meter renewable generation: To be agreed upon by Buyer and Seller

[Example]:

Seller shall, at its sole expense, cause the installation, maintenance, operation and replacement (as needed) of a meter to be used as the Electric Revenue Meter and back-up meters, in accordance with the Transmission Provider's metering protocols, at the Delivery Point to measure the Distribution Services.

All Distribution Services must be measured by the Project's Electric Revenue Meter to be eligible for payment under this Agreement. Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters. Seller shall authorize Buyer to view the on-line meter data from the Electric Revenue Meter. Within Seller's Meter Service Agreement with the CAISO, as applicable, Seller shall identify Buyer as an authorized user with "read only" privileges.

Seller consents to Buyer obtaining Electric Revenue Meter data from the Transmission Provider and all inspection, testing and calibration data and reports for the Electric Revenue Meters. Seller agrees to provide to Buyer all meter data, inspection, testing and calibration data and reports for the submeter(s) upon Buyer's request.]

[] In Front of the Meter Energy Storage: To be agreed upon by Buyer and Seller

2. Testing

[] In Front of the Meter generation:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

[] In Front of the Meter Energy Storage:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

APPENDIX IX

SCHEDULING

During the Delivery Term, Seller shall comply with the requirements associated with scheduling in Section 4.8 if applicable based on the resource type

☐ In Front of the Meter generation: Applicable

☐ In Front of the Meter Energy Storage: Applicable

APPENDIX X

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

[DATE]

To: San Diego Gas & Electric Company
555 W. Fifth Street
Mail Code: ML 18A3
Los Angeles, CA 90013

Re: Our Irrevocable Standby Letter of Credit No. _____
In the Amount of US\$ _____

Ladies and Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Beneficiary] ("Beneficiary"), by order and for account of [name of Applicant] ("Applicant"), [address of Applicant], available at sight upon demand at our counters, at [location] for an amount of US\$ _____ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

- 1- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "[name of Applicant] ("Applicant") is in default under the Distribution Services Agreement between Beneficiary and Applicant dated _____ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a "default", "event of default" or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. \$ _____."

or

- 2- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. \$ _____."

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.
- Partial and multiple drawings are permitted.
- Fax of Document 1 or 2 or 3 above is acceptable. Notwithstanding anything to the contrary herein, any drawing hereunder may be requested by transmitting the requisite documents as described above to us by facsimile at _____ or such other number as specified from time to time by us. The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Beneficiary that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1, 2, or 3 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 ("UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

Authorized Signature(s)

APPENDIX XI – FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent”) is entered into as of [Date] among San Diego Gas & Electric Company (“SDG&E”), [_____] (the “Assignor”), and [Name of Lender/Agent for the Financing Parties] (the “Assignee”).

RECITALS

WHEREAS, pursuant to the Distribution Services Agreement made as of [Date] (the “Assigned Agreement”), between the Assignor and SDG&E, SDG&E has agreed to purchase output from the Assignor’s [Distribution Services] (the “Project”) as further specified in therein;

WHEREAS, pursuant to a [Security Agreement] dated as of [Date] (the “Security Agreement”), the Assignor has granted to the Assignee a lien on and a security interest in, to and under all of its right, title and interest in the Assigned Agreement, as collateral security for the Assignor’s obligations under that certain [Credit Agreement] dated as of the date of the Security Agreement among the Assignor, [_____] (“Lenders”) and the related financing documents (the “Credit Agreement” and collectively, the “Financing Documents”) pursuant to which the Lenders have agreed to loan funds to the Assignor in connection with the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

Section 2. Consent to Assignment.

(a) Under the terms and conditions set forth in this Consent, SDG&E hereby consents to (i) the assignment by the Assignor of all its right, title and interest in, to and under the Assigned Agreement to the Assignee, as collateral security for the obligations as and to the extent provided in the Security Agreement, and (ii) the assignment by the Assignor to any transferee or assignee of, or successor to, the Assignee (provided that any transferee or nominee satisfies the requirements of Article 8 (credit support) of the Assigned Agreement and is otherwise a Qualified Transferee. “Qualified Transferee” shall mean any transferee or assignee of, or successor to, the Assignee that (x) has (or has entered into contracts for the provision of services with an entity that has) substantial experience in the construction and/or operation of [wind/geothermal/solar generating facilities] of a type similar to the Project and (y) has the financial capability to perform under the Assigned Agreement (taking into account the fact that such transferee or nominee may be a special purpose vehicle whose sole asset may be the Project), in each case as reasonably determined by SDG&E.

(b) The Assignor agrees that it shall remain liable to SDG&E for all obligations of the Assignor under the Assigned Agreement, notwithstanding the collateral assignment contemplated in the Security Agreement.

(c) If the Assignee elects to exercise its remedies under the Security Agreement to foreclose on its lien in the Assigned Agreement, the Assignee shall notify SDG&E pursuant to Section 6(f) of this Consent. Upon completion of such foreclosure, the Assignee (or its permitted assignee or transferee or successor thereof) (i) shall be entitled to all of the benefits of the Assigned Agreement, (ii) shall assume in writing and be liable for each and every duty, obligation and liability of the Assignor under the Assigned Agreement, including but not limited to the duties and obligations that arose or accrued prior to the date of execution of this Consent, and (iii) shall cure any and all then existing Seller Events of Default that have arisen prior to the date of the assumption of the Assigned Agreement by Assignee (or its permitted assignee or transferee or successor thereof) except for any Seller Events of Default that, by their nature, are not capable of being cured by Assignee (or its permitted assignee or transferee or successor thereof).

Section 3. Representations and Warranties. SDG&E hereby represents and warrants to the Assignee that, as of the date of this Consent:

(a) The execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been duly authorized by all necessary corporate action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any material agreement presently in effect with respect to or binding upon SDG&E.

(b) All government approvals necessary for the execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been obtained and are in full force and effect.

(c) This Consent and the Assigned Agreement have been duly executed and constitute legal, valid and binding obligations of SDG&E, enforceable against it in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights generally or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, or by principles of public policy.

(d) To the knowledge of SDG&E, the Assignor is not in default under any material covenant or obligation under the Assigned Agreement, and no events have occurred that, with the giving of notice or the passage of time, would constitute a default by the Assignor under the Assigned Agreement, and the Assigned Agreement is in full force and effect and has not been amended.

Section 4. Consent and Agreement.

SDG&E and the Assignor hereby agree that, so long as any obligations of the Assignor under the Credit Agreement and the Security Agreement remain outstanding:

(a) No Material Amendments. SDG&E and the Assignor will not enter into any material amendment, supplement or other modification of the Assigned Agreement (an "Amendment") until after the Assignee has been given at least fifteen (15) Business Days' prior written notice of the proposed Amendment by the Assignor (a copy of which notice will be provided to SDG&E by the Assignor), and will not then enter into such Amendment if SDG&E has, within such fifteen (15) Business Day period, received a copy of (a) the Assignee's objection to such Amendment or (b) the Assignee's request to the Assignor for additional information with respect to such Amendment.

(b) Notices of Default and Right to Cure.

(i) SDG&E shall deliver to the Assignee at the address set forth on the signature pages hereof, or at such other address as the Assignee may designate in writing from time to time to SDG&E, concurrently with the delivery thereof to the Assignor, a copy of each notice of default under the Assigned Agreement. Notwithstanding anything to the contrary contained in the Assigned Agreement, such notice shall be coupled with an opportunity to cure any such default within the longer of the cure period available to the Assignor in the Assigned Agreement or thirty (30) days after notice thereof (except with respect to payment defaults, which cure must be made within five (5) Business Days after the last day of the cure period available to the Assignor in the Assigned Agreement with respect to payment defaults), such cure period shall commence upon receipt of notice by the Assignee). If possession of the Facility is necessary to cure any Default by the Assignor under the Assigned Agreement, and the Assignee commences foreclosure proceedings against the Assignor, the Assignee will be allowed an additional sixty (60) days to complete such proceedings. In order for the Assignee to cure a default under Section 5.1(d) of the Assigned Agreement, the Assignee shall secure, as soon as reasonably practical after such default, an order from the court (the "Bankruptcy Court") administering the proceeding under which the Assignor is a debtor in a proceeding under Title 11 of the United States Code, as amended (the "Bankruptcy Code") in a form reasonably acceptable to SDG&E which authorizes (a) the Assignor to pledge collateral to secure the Assignor's obligations under the Assigned Agreement (whether by the maintenance or provision of a Letter of Credit or otherwise) whether such obligations arose prior or following the Section 5.1(d) default of the Assigned Agreement, (b) the right of SDG&E to terminate the Assigned Agreement upon a subsequent default and expiration of cure periods described herein with respect to the Assignor (including, without limitation, the conversion of a case under Chapter 11 of the Bankruptcy Code to a case under Chapter 7 of the Bankruptcy Code), and to exercise rights of netting or setoff of obligations upon such termination, in each case without regard to Section 362 of the Bankruptcy Code and without regard to whether the amounts to be netted or setoff were incurred pre-petition or post-petition, (c) that the rights of SDG&E specified in the foregoing clause (b) not be subject to being modified, stayed, avoided or otherwise limited by any further order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code, and (d) the assumption by Assignor of the Assigned Agreement (a "Bankruptcy Order"). It being further understood that if such Bankruptcy Order is not timely obtained, Buyer shall have the right to declare an Early Termination Date in accordance with Article 5 of the Assigned Agreement.

(ii) Except to the extent that automatic cancellation, suspension or termination occurs pursuant to the Assigned Agreement, no cancellation, suspension or termination of the Assigned Agreement by SDG&E, shall be binding upon the Assignee without such notice and the opportunity to cure during the applicable extended cure periods specified in this Section 4(b). If the Assignee fails to cure or rectify the effect of a default within the extended cure periods specified in this Section 4(b), SDG&E shall have all its rights and remedies with respect to such default, action or omission as set forth in the Assigned Agreement.

(c) Payments to Designated Account. The Assignor and SDG&E acknowledge and agree that all payments to be made by SDG&E to the Assignor (if any) under the Assigned Agreement shall be made in lawful money of the United States of America in immediately available funds, to the following account:

[name and details for account designated by the Assignee]

or to such other person or entity and/or at such other address as the Assignee may from time to time specify in writing to SDG&E. In making such payments, SDG&E shall be entitled to rely conclusively on instructions that it may receive from time to time from the Assignee without any duty to make inquiry into

the authority of the Assignee to give such instructions or the authenticity of any signatures placed upon such instructions.

Section 5. Damages Limitation.

NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY UNDER THIS CONSENT FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, REMOTE, OR SPECULATIVE DAMAGES OR LOST PROFITS.

Section 6. Miscellaneous.

(a) This Consent shall be binding upon the successors and permitted assigns of each party and shall inure, together with the rights and remedies of the Assignee hereunder, to the benefit of the successors and permitted assigns of the parties hereto, including the Financing Parties and their respective permitted successors, transferees and assigns.

(b) No amendment or waiver of any provisions of this Consent or consent to any departure by any party hereto from any provisions of this Consent shall in any event be effective unless the same shall be in writing and signed by the Assignee and SDG&E.

(c) This Consent shall be governed by, and construed under, the laws of the State of California applicable to contracts made and to be performed in such State and without reference to conflicts of laws. The parties hereto agree that any legal action or proceeding arising out of this Consent may be brought in the courts of the State of California, in and for the County of San Diego, or of the United States of America for the Southern District of California. By execution and delivery of this Consent, the parties hereto accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified airmail, postage prepaid, to the Assignee, SDG&E and the Assignor, as the case may be, at their respective addresses for notices as specified herein and that such service shall be effective five (5) business days after such mailing. Nothing herein shall affect the right to serve process in any other manner permitted by law or the right of the Assignee or SDG&E to bring legal action or proceedings in any other competent jurisdiction. The parties hereto hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of this Consent or the transactions contemplated hereby brought before the foregoing courts on the basis of forum non conveniences.

(d) **EACH OF SDG&E, THE ASSIGNEE AND THE ASSIGNOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT.**

(e) This Consent may be executed in one or more counterparts with the same effect as if such signatures were upon the same instrument. This Consent may be delivered by facsimile transmission.

(f) All notices to be given under this Consent shall be in writing and shall be delivered personally, sent by certified mail return receipt requested or registered first-class mail, postage prepaid, or sent by facsimile, or courier to the intended recipient at its address as set forth on the signature pages below, and all payments to be made under this Consent shall be made by wire transfer of immediately available funds or check representing immediately collectible funds to the account or address of the intended recipient

as set forth on the signature pages hereto, unless the recipient has given notice of another address or account for receipt of notices or payments.

(g) This Consent shall terminate in its entirety upon the earlier of (i) the indefeasible payment in full in cash of all obligations of the Assignor under the Credit Agreement, and (ii) the termination of the Credit Agreement in accordance with the terms thereof and the terms of this Consent. The Assignee agrees to give prompt written notice to the Assignor and SDG&E of the occurrence of either such event.

(h) The captions or headings at the beginning of each Section of this Consent are for convenience only and are not a part of this Consent.

IN WITNESS WHEREOF, each of SDG&E, the Assignee and the Assignor has duly executed this Consent and Agreement as of the date first above written.

SAN DIEGO GAS & ELECTRIC COMPANY

By:

Name:

Title:

[Address for Notices:]

[ASSIGNOR]

By: _____

Name:

Title:

[Address for Notices:]

[ASSIGNEE]

By: _____

Name:

Title:

[Address for Notices:]

APPENDIX XII

NOTICES

Name: _____ (“Seller”)

Name: San Diego Gas and Electric Company, a California corporation (“Buyer” or “SDG&E”)

All Notices:

All Notices:

Delivery Address:

Delivery Address:

Street:

City:

Mail Address:

Mail Address:

Attn:

Phone:

Invoices and Payments:

Invoices and Payments:

Attn:

Phone:

Wire Transfer:

Wire Transfer:

BNK:

BNK:

ACCT Title:

ACC Title:

ABA:

SDG&E ABA:

ACCT:

ACCT:

DUNS:

DUNS:

Federal Tax ID Number:

Federal Tax ID Number:

Credit and Collections:

Credit and Collections:

Attn:

Attn:

Phone:

Phone:

Fax:

With additional Notices of an Event of Default to Contract Manager:

With additional Notices of an Event of Default to Contract Manager:

Attn:

Attn:

Phone:

Phone:

APPENDIX XIII
SAFETY PROVISIONS

[To be provided by SOC Pilot Subscriber]

APPENDIX XIV
OPERATIONS LOG REQUIREMENTS

[SDG&E Note: Seller to Insert Operations Log Template, per SOC Project type]

[] In Front of the Meter generation: Applicable

[] In Front of the Meter Energy Storage: Applicable

[for example, Energy Storage projects shall include information on charging, discharging, availability, maintenance performed, outages, electrical characteristics of the energy storage systems and similar information relating to the availability, testing and operation of the Project.]

ENERGY STORAGE POWER PURCHASE AGREEMENT

between

SAN DIEGO GAS & ELECTRIC COMPANY
as Buyer

and

[INSERT NAME OF SELLER]
as Seller

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ENERGY STORAGE POWER PURCHASE AGREEMENT

This Energy Storage Power Purchase Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 20____ (“Effective Date”) by SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation (“Buyer”), and [insert name and type of legal entity] (“Seller”). Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

RECITALS

This Agreement is made with reference to the following facts, among others:

A. Buyer is an investor-owned electric utility serving customers in San Diego and Orange counties.

B. Seller will develop, permit, design, procure, construct, commission, test, own, operate and maintain [insert description of facility] as more particularly described in Appendix 1.2.2 attached hereto (“Project”), consisting of [insert number] [insert type:] (the “Energy Storage System”) to be constructed on an approximately [insert number] acre parcel of land (the “Site”) located adjacent to [insert name of substation] in [enter city and state]. **[NOTE to Bidders: conforming changes needed if multiple Energy Storage Systems.] [NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**

C. Seller wishes to sell and deliver to Buyer, and Buyer wishes to provide the electricity to recharge the Energy Storage System and purchase from Seller, Capacity, Energy, Resource Adequacy Benefits, Ancillary Services, and other products that may be produced from the Project, under the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows.

ARTICLE 1 PURCHASE AND SALE OF PRODUCT

1.1 Product. During the Delivery Period, Seller shall construct and/or operate the Project and make available, deliver, and sell the Product therefrom to Buyer, and Buyer shall provide to Seller all electricity required to charge and recharge the Energy Storage System and purchase and receive the Product therefrom, when and as the Project is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.1. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Capacity, Delivered Energy, Charging Energy, Ancillary Services or Resource Adequacy Benefits from any other resource or the market for delivery or charging hereunder, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement; provided, that Seller shall be permitted, with Buyer’s

prior written consent to be granted in Buyer's sole discretion, to provide Buyer with Replacement RA during the period of any Scheduled Outage in the amount of the RA Shortfall Amount for purposes of Appendix 9.2.

1.1.1 Capacity. Buyer shall have the exclusive right to the Contract Capacity of the Project. As of the Effective Date, the Contract Capacity shall equal the Expected Contract Capacity of the Project, without adjustment for temperature, pressure, humidity or other adjustment factors. The actual Contract Capacity of the Project and each Energy Storage System will be determined upon the completion of the Commercial Operation Test and Contract Capacity Test for the Project and each year of the Delivery Period in accordance with the testing procedures of Sections 7.2 and 7.3, as applicable. Such tests will demonstrate the Capacity of the Project, which shall be the Contract Capacity from and after such tests; provided, that in no event shall the Contract Capacity of the Project (i) exceed PMAX for the Project (i.e. the Contract Capacity shall be limited to PMAX until such time as Seller gets PMAX increased to the tested Contract Capacity), (ii) exceed the Qualified RA Capacity or the Qualified Flexible RA Capacity (without giving effect to any Change in RA Law occurring after the Effective Date), whichever is lower, nor (iii) exceed the Energy Storage System's Expected Contract Capacity as identified in Appendix 1.1.1. Seller agrees that the Energy Storage System is subject to the terms of the Availability Standards.

1.1.2 Energy; Efficiency Rate. Buyer shall have the exclusive right to the Charging Energy Capacity and Discharging Energy Capacity of the Project. Subject to the terms and conditions of this Agreement, Seller commits to make the Project available to accept Charging Energy and to deliver any and all Stored Energy of the Project to Buyer, and Buyer shall have the exclusive rights to schedule Charging Energy to the Project and receive any and all Stored Energy of the Project, subject to the Operating Restrictions set forth in Appendix 1.1 and Availability Notices provided in accordance with Section 15.1, including pursuant to a forward schedule or a Supplemental Energy instruction from CAISO. The actual Round-Trip Efficiency Rate of the Project will be determined upon the completion of the Commercial Operation Test for the Project and from time to time in accordance with the testing procedures of Section 7.4. Such test will demonstrate the Tested Round-Trip Efficiency Rate of the Project applicable from and after the completion of such test. **[Note to Bidders: Station use to be served separately.]**

1.1.3 Ancillary Services. Buyer shall have the exclusive rights to any and all Ancillary Services Capacity and Associated Ancillary Services Energy associated with the Project with characteristics determined in accordance with the Tariff, in the amounts set forth in the following table(s): **[NOTE TO BIDDERS: include all bid ancillary services only.]**

Spinning Reserve MW	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Non-Spinning Reserve MW	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Regulation Up (MW)	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Regulation Down MW	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Black Start (Yes/No)	

1.1.4 Resource Adequacy Benefits. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term. Subject to the terms and conditions of this Agreement, Seller grants, pledges, assigns and otherwise commits to Buyer the full Capacity of the Project for use by Buyer in meeting its resource adequacy obligations under any Resource Adequacy Rulings. The Parties shall cooperate and take commercially reasonable actions (including amending this Agreement, executing such documents or instruments as is reasonably necessary, and complying with all applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the Project for Buyer's sole benefit through the Delivery Period.

1.1.5 Exclusive Rights. Buyer shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, resale or remarketing of the Product.

1.1.6 Multiple-Use Application Compliance. The Parties agree that Applicable Laws includes the CPUC's *Decision on Multiple-Use Application Issues*, Decision No. 18-01-003 and the rules adopted thereto. In compliance with that decision, Seller acknowledges and represents and warrants that it has not sold, and will not sell during the Delivery Period except as otherwise required by Applicable Laws, any of the Capacity of the Project or any Product from the Project to any other buyer, except as otherwise permitted in this Agreement.

1.2 Project.

1.2.1 Delivery of Energy. Delivered Energy from the Project shall be delivered to the Energy Delivery Point at a nominal voltage of [] volts line-to-line.

1.2.2 Energy Storage Systems. The Energy Storage System will consist of [insert description of storage system] and additional equipment, as described on Appendix 1.2.2 attached hereto. The Stored Energy Measuring Device shall be capable of measuring the instantaneous amount of Stored Energy (in increments of no larger than kilowatt-hours (kWh_{DC})), Maximum Energy Capacity (in kWh_{DC}) and State of Energy (as a %), utilizing a reasonably accurate methodology consistent with applicable Industry Standards, and providing such amount of Stored Energy, Maximum Energy Capacity and State of Energy on a real-time basis to Buyer. Any changes to the Project that causes the Energy Storage System to be materially different from the description of the Energy Storage System as described in Appendix 1.2.2, including any changes that result in the Contract Capacity of the Energy Storage System to exceed the Expected Contract Capacity, shall require Buyer's written consent in an amendment to be exercised in Buyer's sole discretion.

1.2.3 Station Use. The Project may serve Station Use to the extent the Project is designed in a manner which allows or requires it to do so, and all Product stored or delivered hereunder will be net of Station Use.

1.3 Delivery Points.

1.3.1 Energy Delivery Point. The Energy Delivery Point shall be the PNode at the Project's first point of interface with the CAISO Grid (as described and set forth in the single-line diagram of grid interconnection attached hereto as Appendix 1.3.1). Seller retains title and

bears risk of loss related to Delivered Energy up to the Energy Delivery Point, and Buyer shall take title and bear risk of loss related to Delivered Energy at and from the Energy Delivery Point. Buyer retains title and bears risk of loss related to Charging Energy up to the Energy Delivery Point, and Seller shall take title and bear risk of loss related to Charging Energy at and from the Energy Delivery Point. Notwithstanding the above, Seller acknowledges and agrees that any other agreement between it and Buyer, including any interconnection agreement, is separate and apart from this Agreement such that no other agreement shall modify or add to the Parties' obligations under this Agreement.

1.3.2 Electric Retail Delivery Point. Without limiting the provisions of Section 1.2.3, the Electric Retail Delivery Point is the point at the which the Project receives retail electricity from the Retail Electricity Provider for Station Use. Prior to the Project receiving retail electricity from the Retail Electricity Provider for Station Use, Seller shall provide Buyer a true and accurate description and depiction of such Electric Retail Delivery Point, and such description and depiction shall be attached hereto as Appendix 1.3.2.

ARTICLE 2

TERM; CONDITIONS PRECEDENT; DELIVERY PERIOD

2.1 Term. The "Term" of this Agreement shall commence upon the Effective Date and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the expiration of the Delivery Period.

2.2 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Effective Date until the CP Satisfaction Date, this Agreement shall be in full force and effect, enforceable and binding only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under this Section 2, including, as it relates to Section 2, the rights and obligations under Sections 3, 5, 6, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 25, Appendix A and the other appendices referenced in the foregoing Sections.

2.3 Obligations of the Parties. The Parties shall reasonably cooperate with each other to cause the Conditions Precedent to be satisfied as soon as reasonably practical.

2.3.1 Seller's Obligations. Prior to the CP Satisfaction Date, Seller shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Sections 2.4.2 and [insert others], (ii) use commercially reasonable efforts to pursue development of the Project in accordance with Sections 5 and 6, (iii) comply with Section 6 in achieving the applicable milestones in the Milestone Schedule that have due dates occurring prior to the CP Satisfaction Date, (iv) deliver the Monthly Progress Report in accordance with Section 6, and (v) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 18-25. Upon an Event of Default of Seller prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the full amount of the Pre-Construction Security. Buyer may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Seller prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to the CP Satisfaction Date.

2.3.2 Buyer's Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Section 2.4.1, and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 18-25. Upon an Event of Default of Buyer prior to the CP Satisfaction Date, Seller may exercise remedies in accordance with Section 3.3.

2.4 Conditions Precedent. Subject to Section 2.2, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.5) of all of the following conditions precedent ("Conditions Precedent") by the deadline dates set forth below for each Condition Precedent without extension for Force Majeure or any other reason:

2.4.1 CPUC Approval. No later than [_____], Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking approval thereof. If, within sixty (60) days, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

2.4.2 Electrical Interconnection. No later than [_____], Seller shall have entered into a Large/Small Generator Interconnection Agreement providing for the construction of Interconnection Facilities necessary to maintain the "Full Capacity Deliverability Status" (as defined in the CAISO Tariff) of the Project and setting forth:

(a) an estimated in-service interconnection date for the "Participating TO's Interconnection Facilities," the "Network Upgrades," and the "Distribution Upgrades" (as each term is defined in the CAISO Tariff) of no later than [_____] months after Seller provides the Participating Transmission Owner with the appropriate security and written authorization to proceed under its Small Generator Interconnection Agreement for the Project; and

(b) a refundable cost for "Network Upgrades" (as defined in the CAISO Tariff) that Seller would be obligated to pay and would be entitled to reimbursement from the CAISO, a Participating Transmission Owner, or any other affected transmission provider thereunder.

2.4.3 [INSERT OTHERS]

2.5 Failure to Meet All Conditions Precedent.

2.5.1 Beneficiary Party.

(a) Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Section 2.4.2, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, both of the Parties must waive (exercisable in their sole discretion) non-satisfaction by the deadline date therefor.

(b) Buyer shall be the sole beneficiary of the Conditions Precedent set forth in Section 2.4.1, and in order for a waiver of non-satisfaction of such Conditions Precedent

to be effective, Buyer alone must waive (exercisable in its sole discretion) non-satisfaction by the deadline date therefor.

(c) ***[IF APPLICABLE:*** Seller shall be the sole beneficiary of the Conditions Precedents set forth in Section 2.4.3, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (exercisable in its sole discretion) non-satisfaction by the deadline date therefor./

2.5.2 Termination. If the Condition Precedent set forth in Section 2.4.1 is not satisfied or waived in writing by SDG&E on or before the deadline date therefor, without extension for Force Majeure or any other reason, then this Agreement shall automatically terminate (with no additional actions required by either Party to effect such termination) with no further obligation to either Party (other than as set forth in Section 2.5.2(b) below and any other payment obligations which have accrued and are payable at the time of termination). If any of the Conditions Precedent is not satisfied or waived in writing by the beneficiary Party or Parties thereto on or before the applicable deadline date therefor, without extension for Force Majeure or any other reason, then either of the Parties may terminate this Agreement with no further obligation to either Party (other than as set forth in Sections 2.5.2(a) below and any other payment obligations which are accrued and payable at the time of termination) by delivery of Notice to the other Party within fifteen days after the applicable deadline date. If a Party has the right to terminate this Agreement pursuant to this Section 2.5.2, but fails to deliver Notice of termination within each fifteen day period after each deadline date, then such Party's termination right per this Section 2.5.2 for such deadline date shall be deemed waived in its entirety.

(a) Upon a termination of this Agreement by either Party for any reason under Section 2.5 other than the failure of the Conditions Precedent set forth in Section 2.4.1 to be satisfied or waived by Buyer, Seller shall pay to Buyer an amount equal to the full amount of the Pre-Construction Security. Buyer may retain and draw upon the Pre-Construction Security to pay such amount.

(b) Upon a termination of this Agreement by either Party as a result of the failure of the Conditions Precedent set forth in Section 2.4.1 to be satisfied or waived by Buyer, Buyer shall return to Seller the undrawn portion of Pre-Construction Security.

2.6 Effectiveness of Agreement on and after CP Satisfaction Date. This Agreement shall be in full force and effect, enforceable and binding in all respects as of the CP Satisfaction Date until the conclusion of the Delivery Period or earlier termination pursuant to the terms of this Agreement; provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for the Product delivered prior to the end of the Delivery Period, the Termination Payment, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Pre-Construction Security, Construction Period Security, or Delivery Period Security, as applicable, is released and/or returned as applicable (if any is due).

2.7 Guaranteed Initial Delivery Date. Subject to Section 2.10.2, Seller shall achieve the Initial Delivery Date (as defined in Section 2.8 below) by **[insert date]** ("Guaranteed Initial Delivery Date"). **[NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**

2.8 Delivery Period. The “Delivery Period” shall be the period during which the Product is available to Buyer, and will commence at 12:01 a.m. PPT on the Initial Delivery Date, and shall continue until midnight on the date that is the last day of the month in which the [XX] anniversary of the Initial Delivery Date occurs. The “Initial Delivery Date” shall be the date upon which all the following conditions have been satisfied:

(a) Seller has completed, to Buyer’s satisfaction, Seller’s obligations set forth in Articles 5, 6, and 7 in order to bring the Project into full operation as contemplated by this Agreement

(b) The Project has achieved Commercial Operation;

(c) Seller has received its market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;

(d) Seller has executed the Participating Generator Agreement, Meter Service Agreement, any contract for the provision of electric retail service (if required for the operation of the Project), and any other forms or agreements required by the CAISO or any Participating Transmission Owners with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);

(e) The Parties have taken all actions, including executing all documents and instruments, required to authorize Buyer to act as Scheduling Coordinator;

(f) Seller has entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Participating Transmission Owner’s electric system and CAISO Grid;

(g) Seller has delivered to Buyer the required Delivery Period Security and related documents and instruments as set forth in Article 11; and

(h) The Priority Security Interest required under Section 11.4 and the Subordinated Security Interest required under Section 11.5 shall continue to be perfected and in full force and effect.

The Parties agree that, in order for Buyer to dispatch the Energy Storage System on the Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including, without limitation, Seller’s delivering an Availability Notice for the Initial Delivery Date as provided Section 15.1, and Buyer’s delivering a Dispatch Notice and submitting schedules for the Initial Delivery Date as provided in Article 15, in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Energy Storage System on the Initial Delivery Date. Seller shall give Buyer Notice at least [x] days before the Initial Delivery Date.

2.9 Early Initial Delivery Date. If Seller satisfies the conditions precedent set forth in Section 2.8 for the Initial Delivery Date prior to the applicable Guaranteed Initial Delivery Date, then such earlier date shall be the Initial Delivery Date under this Agreement; however, in no event shall the Initial Delivery Date occur any earlier than [date] without Buyer’s prior written consent.

2.10 Delayed Initial Delivery Date.

2.10.1 Daily Delay Damages. If Seller has not satisfied the conditions precedent set forth in Section 2.8 for the Initial Delivery Date of the Project by the Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of the lesser of (a) one hundred twenty (120) calendar days *less* the number of days of extensions of the Guaranteed Initial Delivery Date due to Force Majeure, or (b) one-hundred (100) calendar days (the “Cure Period”). Buyer shall be entitled to recover the Daily Delay Damages owed by Seller from the Construction Period Security held by Buyer. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date would be difficult or impossible to predict with certainty, (b) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the Daily Delay Damages set forth in this section are the exclusive remedy for Seller’s delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date but shall not otherwise act to limit any of Buyer’s rights or remedies arising from any other Event of Default by Seller, including, without limitation, the failure by Seller to achieve the Initial Delivery Date by the end of the Cure Period following the Guaranteed Initial Delivery Date as set forth in Section 3.2(i).

2.10.2 Excused Delays. For all purposes under this Agreement, the Guaranteed Initial Delivery Date will be extended on a day for day basis without imposition of any Daily Delay Damages to the extent that Seller is delayed in its critical path to achieving the Initial Delivery Date by the Guaranteed Initial Delivery Date due to any of the following events:

(a) Force Majeure, provided that all extensions of the Guaranteed Initial Delivery Date for the Project due to Force Majeure shall not exceed 90 calendar days in the aggregate (“Maximum Force Majeure Delay”) and any delay by Seller in excess of the Maximum Force Majeure Delay shall be subject to Daily Delay Damages in accordance with Section 2.10.1.

(b) Delay by the Participating Transmission Owner or the CAISO in installing the Interconnection Facilities for which it is responsible in accordance with the schedule set forth in the electrical interconnection agreement among Seller, the CAISO, and the Participating Transmission Owner. Seller acknowledges and agrees that nothing in this Agreement is intended to abrogate, amend or modify the terms of any electrical interconnection agreement between it and the Participating Transmission Owner. Except as may be set forth in such electrical interconnection agreements, the Participating Transmission Owner has not made and makes no, and Seller is not relying on any, representations or warranties of any kind or nature, express or implied, with respect to the electrical interconnection, including, but not limited to, any representations or warranties concerning the costs, construction schedule, or permitting of, or any other matter related to, the electrical interconnection for the Project. Seller’s sole and exclusive remedy under this Agreement for any delay by the Participating Transmission Owner or the CAISO in completing the Interconnection Facilities for which it is responsible is an extension of the Guaranteed Initial Delivery Date in accordance with this Section.

(c) Buyer’s delay or other failure to perform any of its material obligations under this Agreement which are to be performed prior to the Initial Delivery Date in a manner that directly delays the Initial Delivery Date.

2.10.3 CAISO Ancillary Services Certification. Seller shall take all necessary steps within its control to enable CAISO Ancillary Services Certification to occur within thirty (30) days after the Initial Delivery Date. If the CAISO Ancillary Services Certification has not occurred within thirty (30) days after the Initial Delivery Date, Seller shall owe liquidated damages to Buyer of \$15,000 per day of delay, provided that such thirty (30)-day deadline shall be extended on a day-for-day basis for reasons of Force Majeure or other events or circumstances outside of Seller's reasonable control. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in CAISO Ancillary Services Certification would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for Seller's delay in the CAISO Ancillary Services Certification on or before the deadline therefor.

ARTICLE 3 EVENTS OF DEFAULT; REMEDIES; TERMINATION

3.1 Events of Default. An "Event of Default" shall mean, with respect to either Party (a "Defaulting Party"), the occurrence of any of the following:

(a) The failure to make, when due, any payment in a material amount required under this Agreement if such failure is not remedied within three (3) Business Days after receipt of Notice;

(b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such failure is not cured within 10 days after receipt of Notice;

(c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within 10 days of receipt of Notice, or such longer period not to exceed 60 days if the failure is not capable of being cured within such 10 days with the exercise of reasonable diligence, so long as the Defaulting Party has commenced and is diligently pursuing a cure during such initial 10-day period;

(d) Such Party becomes Bankrupt; or

(a) Such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 28.5; or

(e) Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

3.2 Seller Events of Default. An "Event of Default" shall mean, with respect to Seller as the "Defaulting Party", the occurrence of any of the following:

- (a) Seller fails to comply with any of its covenants under Section 19.5;
- (b) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without Buyer's written consent, which consent may be granted or withheld in Buyer's sole discretion;
- (c) Seller fails to comply with its obligations under Article 11, including without limitation failing to post or maintain the Construction Period Security or applicable Performance Assurance, within three (3) Business Days of receipt of Notice of such failure;
- (d) Seller makes any material misrepresentation or omission in any report, including status and metering report, or any Milestone Schedule or Availability Notice (including without limitation the log, records and reports required under Sections 8.1.2, 8.1.3, 8.1.4, 17.1, and Appendices 6.1(a) and (b), and Article 15) required to be made or furnished by Seller pursuant to this Agreement;
- (e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, for delivery during the Delivery Period, the Product, or any portion thereof, to any party other than Buyer or CAISO;
- (f) During the Delivery Period, the Equivalent Availability Factor is below 0.90 on average for a rolling period of twelve (12) consecutive months;
- (g) During the Delivery Period, the Contract Capacity falls below seventy percent (70%) of the Expected Contract Capacity;
- (h) During the Delivery Period, the Round-Trip Efficiency Rate Factor is below the applicable Round-Trip Efficiency Rate Minimum Threshold for more than four (4) months during any rolling period of twelve (12) consecutive months (for the avoidance of doubt, such four (4) months need not be continuous);
- (i) Seller fails to achieve the Initial Delivery Date for the Project within the Cure Period following the Guaranteed Initial Delivery Date;
- (j) Seller starts-up or operates, or permits or causes any third party to start-up or operate, the Project other than as expressly permitted under this Agreement;
- (k) The ownership interest in Seller is pledged or assigned or caused or permitted to be pledged or assigned as collateral to any party other than pursuant to a Permitted Lien or in accordance with Section 12.1 or Section 25.5;
- (l) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Section 21.2;
- (m) Seller defaults under any Security Document in any material respect and such default is not cured within the applicable cure period, if any, set forth in the Security Document, or Seller repudiates, disaffirms, disclaims or rejects, in whole or in part, or challenges the validity of, any Security Document;
- (n) With respect to Guarantor, if there is one:

(i) Any representation or warranty made by Guarantor in the Guaranty Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such failure shall not be cured within 10 days after receipt of Notice;

(ii) The failure of Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in the Guaranty Agreement, if such failure is not remedied within one (1) Business Day (in the case of a failure to pay) and three (3) Business Days (in all other cases) after receipt of Notice;

(iii) Guarantor becomes Bankrupt;

(iv) The failure by Guarantor to maintain a Credit Rating of at least ["BBB-"] by S&P or ["Baa3"] by Moody's and a tangible net worth of at least [\$XX] Billion; **[Note to Bidders: subject to credit review];**

(v) The Guaranty Agreement fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the indefeasible satisfaction of all of Seller's obligations hereunder to which such Guaranty Agreement relates; or

(vi) Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Guaranty Agreement; or

(o) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(ii) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(iii) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(iv) such Letter of Credit fails or ceases to be in full force and effect at any time;

(v) the issuer of such Letter of Credit becomes Bankrupt; or

(vi) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit.

3.3 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (a) terminate this Agreement by providing Notice of such termination to the Defaulting Party,

which termination shall be effective on a day no later than 20 days after such Notice is effective (“Early Termination Date”), and the Defaulting Party shall pay the Non-Defaulting Party a Termination Payment as set forth below, (b) require immediate payment of all amounts owed but not yet paid by the Defaulting Party under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance, and (e) pursue any other remedies available at law or in equity, including where appropriate, specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement. If the Non-Defaulting Party elects to terminate this Agreement under clause (a) of this Section 3.3, then the sole and exclusive remedy available to the Non-Defaulting Party shall be the Termination Payment as set forth below.

3.4 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, the amounts owing between the Parties under this Agreement as of the Early Termination Date (the “Termination Payment”) in accordance with this Section. The Non-Defaulting Party shall calculate its Costs, and its Gains or Losses with respect to the Product from the Project in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information, provided that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party may calculate its Gains and Losses in a commercially reasonable manner using relevant market data it has available to it. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to calculate its Gains and Losses. The Termination Payment shall equal the Settlement Amount plus any or all other amounts due to the Non-Defaulting Party (less amounts due to the Defaulting Party) netted into a single amount. Except in the case of a termination of this Agreement by the Non-Defaulting Party solely as a result of an Event of Default by the Defaulting Party under Section 3.1(d) [Bankruptcy], if the Non-Defaulting Party’s aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero (0). Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a termination of this Agreement under Section 3.3(a) would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with such termination but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect to terminate this Agreement as its remedy for an Event of Default by the Defaulting Party.

3.5 Notice of Payment of Termination Payment. As soon as practicable, but in no event later than fifteen (15) Business Days following the Early Termination Date, the Non-Defaulting Party shall give the Defaulting Party Notice of the amount of the aggregate Termination Payment, if any. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount. The aggregate Termination Payment, if any, shall be made by the Defaulting Party to the Non-Defaulting Party within two (2) Business Days after receipt of such Notice.

3.6 Disputes Regarding Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the aggregate Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute, provided that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral in the form of a Letter of Credit, Guaranty Agreement, or other security (acceptable to the Non-Defaulting Party in its sole discretion) to the Non-Defaulting Party in an amount equal to the aggregate Termination Payment, as calculated by the Non-Defaulting Party.

3.7 Suspension of Performance. If an Event of Default occurs and shall be continuing, the Non-Defaulting Party shall have the right to suspend performance under this Agreement upon Notice to the Defaulting Party. At any time prior to or after the receipt of such Notice by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or in equity, including without limitation the right to seek damages or injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

3.8 Bankruptcy Without Early Termination. In the event that Guarantor becomes Bankrupt, but Buyer does not declare an Early Termination Date, the bankruptcy shall not extinguish the Parties' obligations under this Agreement.

3.9 Effect of Termination. Termination of this Agreement shall not operate to discharge any liability which has been incurred by either Party prior to the effective date of such termination.

ARTICLE 4 INSURANCE

4.1 Required Insurance. From the CP Satisfaction Date and thereafter throughout the Term, Seller shall, at its own expense, maintain in force throughout the remaining Term of this Agreement and until released by Buyer the following minimum insurance coverages:

4.1.2 Workers' Compensation insurance or self-insurance in accordance with the laws and regulations of the State of California, providing statutory benefits and covering loss resulting from injury, sickness, disability or death of employees of Seller. In lieu of such insurance, Seller may maintain a self-insurance program meeting the requirements of the State of California.

4.1.3 Employer's liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per accident and per employee for disease.

4.1.4 Commercial General Liability Insurance insuring against liability for damages for personal injury (including bodily injury and death) and property damage. Such insurance shall provide premises/operations, products-completed operations, blanket contractual liability, explosion, collapse and underground coverage, broad form property damage, independent contractor's and personal injury insurance, punitive damages to the extent insurable under the laws of the State of California, in the amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate for combined bodily

injury and property damage. There shall be no wildfire exclusion. Defense costs shall be provided as an additional benefit and may be included within the limits of liability.

4.1.5 Commercial or Business Automobile Liability Insurance insuring against liability for damages for bodily injury, death, or damage to property (including loss of use thereof), and occurring in any way related to the use, loading or unloading of any of Seller's automobiles for coverage of owned, non-owned, leased and hired vehicles, in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. Seller's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with applicable laws. Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 "any auto". If the services involve hauling hazardous materials, coverage shall be endorsed to include MCS 90 endorsement.

4.1.6 Excess or Umbrella Liability Insurance over and above the insurance required above in the amount of not less than [] Million Dollars (\$[],000,000.00) per occurrence/[] Million Dollars (\$[],000,000.00) aggregate.

The amounts of insurance required in Sections 4.1.2 through 4.1.4, may be satisfied by Seller purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

4.1.7 During the construction period for the Project, Builder's Risk insurance on an "all risk of physical loss or damage" basis, including coverage against damage or loss caused by earthquake, flood, windstorm, boiler, engine, and machinery accidents and performance testing and "Delay in Start-up" coverage. The Builder's Risk coverage shall include (i) coverage for the buildings, structures, boiler, machinery, equipment, facilities, fixtures, supplies, and other properties constituting a part of the Project, with an overall limit sufficient to cover repair or replacement; (ii) inland transit coverage for property and equipment that has been off-loaded from a vessel or aircraft until delivered to the Site; (iii) off-site coverage to insure any property or equipment described in (i) above not stored on the Site; (iv) removal of debris; (v) coverage for foundations and other property below the surface of the ground; (vi) expediting expenses; and (vii) hazardous substance cleanup. The Builder's Risk coverage shall modify the standard exclusion for damage caused by faulty workmanship, design or materials so as to insure resulting damage to property free of defective conditions.

4.1.8 After construction has been completed, All Risk property insurance coverage in the amount not less than the full replacement value of the Project, including a full replacement cost endorsement (no co-insurance) with no deduction for depreciation of property if actually replaced, providing, without limitation, (i) coverages against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, other risks from time to time included under "all risk" or "extended coverage" policies, earthquake, flood, collapse, sinkhole, subsidence and such other perils, (ii) off-site coverage as is sufficient to cover off-site equipment for which there have been progress payments, (iii) transit coverage (including ocean cargo where ocean transit will be required) as is sufficient to cover property in transit, and (iv) boiler and machinery coverage on a "comprehensive" basis including breakdown and repair with limits not less than the full replacement cost of the insured objects. The policy/policies shall include increased cost of construction coverage, debris removable, and building ordinance

coverage to pay for loss of “undamaged” property which may be required to be replaced due to enforcement of local, state, or federal ordinances.

4.1.9 If applicable to the scope of work during construction phase of the term of this Agreement, Aircraft/Watercraft Insurance, for all owned, non-owned and hired aircraft or watercraft used in connection with the operation of the Project, with a \$10,000,000 limit per occurrence for property damage and bodily injury, including passengers and crew; provided, such insurance may be provided by the provider of the non-owned or hired aircraft or watercraft.

4.1.10 Pollution Liability Insurance insuring against liability arising out of activities contemplated hereunder or as might be required by federal, state, regional, municipal and local laws, with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate. Seller may satisfy this requirement under Commercial General Liability insurance and Excess or Umbrella Liability insurance policies if such policies provide coverage as is provided for under a Pollution Liability insurance policy. The Buyer shall have the right to review such coverage within such policy and accept the terms or require additional coverage in Buyer’s reasonable discretion.

4.2 Additional Terms and Conditions.

4.2.1 All required insurance policies shall name Buyer, its parent, associated and affiliated companies and their respective directors, officers, agents, servants and employees as loss payees under the policy required in Section 4.1.6 and 4.1.7 as its interest may appear under this Agreement, and as additional insureds by endorsements under the policies required in Sections 4.1.3, 4.1.5, and 4.1.9.

4.2.2 All policies required under Sections 4.1.1, 4.1.2, 4.1.5, and 4.1.9 shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against Buyer.

4.2.3 All policies shall provide thirty (30) days’ advance written notice to Buyer for cancellation or any material change in coverage or condition and ten (10) days’ notice for non-payment.

4.2.4 All policies required under Sections 4.1.3 and 4.1.5 shall contain provisions that specify that the policies are primary and are not excess to or contributing with any insurance or self-insurance maintained by Buyer, and shall contain a severability of interest or cross-indemnity clause.

4.2.5 Seller shall be responsible for its respective deductibles or retentions.

4.2.6 If any of the required insurance policies are written on a “claims made” basis, such policies shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

4.2.7 Certificates of insurance (including applicable endorsements and renewal certificates of insurance thereafter, executed by a duly authorized representative of each

insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies under this Article) and summaries of all such insurance documents shall be sent to Buyer.

4.2.8 Buyer or Buyer's agent may inspect the original policies or require complete certified copies, at any time.

4.2.9 Seller shall require, and shall furnish Buyer with evidence of, the same insurance for its agents or contractors as Buyer requires of Seller.

4.2.10 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Parties under this Agreement.

4.3 Market Practicability.

4.3.1 In the event any insurance required to be maintained hereunder shall not be reasonably available and commercially feasible in the commercial insurance market, Buyer shall waive such requirement to the extent the maintenance thereof is not so available and feasible; provided, however, that (a) Seller shall first request any such waiver in writing, which request shall be accompanied by written reports prepared by an independent insurance broker, or an insurance consultant selected by Seller and reasonably acceptable to Buyer, explaining the extent to which such insurance is not reasonably available and commercially feasible (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions, the form and substance of such reports to be reasonably acceptable to Buyer; (b) at any time after the granting of any such waiver, but not more often than once a year, Buyer may request, and Seller shall furnish to Buyer supplemental reports reasonably acceptable to Buyer from such insurance broker updating its prior reports and reaffirming such conclusion; and (c) any such waiver shall be effective only so long as such insurance shall not be reasonably available and commercially feasible in the commercial insurance market.

4.3.2 If Buyer determines that the types or amounts of any insurance required to be maintained hereunder shall no longer be reasonably adequate, then Buyer may require revisions to the types or amounts of any insurance required hereunder but only if such revisions are commercially reasonable.

4.4 Application of Proceeds. Subject to the requirements of the Lenders' financing documents and the rights or remedies of the Lenders thereunder, Seller shall apply any and all insurance proceeds received in connection with the damage or destruction of the Project toward the repair, reconstruction or replacement of the Project; provided, however, that if the Project is damaged or destroyed due to an event of Force Majeure to an extent that results, or could reasonably be expected to result, in a repair schedule exceeding twelve (12) months, then, notwithstanding anything in this Agreement to the contrary, Seller shall not be obligated to repair, reconstruct or restore the Project unless and until Buyer waives termination under Section 18.3 for the reasonable duration of the repair. Seller shall use commercially reasonable efforts to include in the Lenders' financing documents an obligation on the part of Seller and the Lenders to apply the proceeds of physical damage, and similar insurance obtained by Seller in connection with the Project to repair and maintain the Project in order to effectuate Seller's obligations under this Agreement. In no event shall Seller enter into an agreement with the Lenders respecting the use

of insurance proceeds that is not consistent with generally accepted practices in similar financings within the electric industry.

ARTICLE 5 DESIGN AND CONSTRUCTION OF PROJECT

5.1 Seller's Obligations. At no cost to Buyer, Seller shall:

5.1.1 Develop, design, procure, construct, commission, test, own, operate and maintain the Project as required for Seller to perform its obligations under this Agreement;

5.1.2 Acquire and maintain all entitlements, consents, franchises, permits, certificates, licenses, authorizations and approvals required by any applicable Governmental Authority (other than the CPUC Approval and requirements of Buyer as the Scheduling Coordinator pursuant to Article 17) for the design, development, construction, installation, testing, interconnection, operation, maintenance, monitoring, removal, and ownership of the Project, (the "Required Permits");

5.1.3 Pay all costs allocated to the Project related to acquiring and/or maintaining rights of way and upgrades to, and construction of, facilities required to interconnect the Project to the electric retail system and the Participating Transmission Owner's electric system and CAISO Grid under Full Capacity Deliverability Status (as defined in the Tariff), consistent with Applicable Laws and Seller's interconnection agreement.

5.2 Design Review.

5.2.1 In the event that construction of the Project has not commenced by the Effective Date, at Buyer's request, Seller shall provide to Buyer information related solely to operational characteristics of the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work.

5.2.2 Seller shall provide to Buyer Notice of any changes Seller proposes to make to the Project which will materially impact its operational characteristics and the operational characteristics of such changes, for Buyer's review as far in advance as practicable, but in no event less than 30 days before the changes are to be made.

5.2.3 Buyer may notify Seller in writing of the results of Buyer's review of the information provided by Seller pursuant to Section 5.2.1 or 5.2.2, within 30 days of Buyer's receipt of the specifications for the Project or the change, as appropriate, including a description of any flaws perceived by Buyer in the design.

5.2.4 Seller shall in good faith consider any of Buyer's proposed revisions to Seller's design provided, however, that Seller shall be solely responsible for the final design and shall have no obligation to implement any of Buyer's proposed revisions to Seller's design.

ARTICLE 6

CONSTRUCTION PERIOD AND MILESTONES

6.1 Milestone Schedule. In order to meet the Guaranteed Initial Delivery Date, Seller shall use reasonable efforts to meet the construction milestones set forth on Appendix 6.1(a) (“Milestone Schedule”) and to avoid or minimize any delays in meeting such Milestone Schedule. No later than the 10th day of each month while the Project has not yet met its Initial Delivery Date, Seller shall deliver to Buyer a monthly progress report, substantially in the form set forth in Appendix 6.1(b) and including any additional information reasonably requested by Buyer (“Monthly Progress Report”), describing its compliance with the Milestone Schedule, including projected time to completion of any milestones, for the Project. Seller shall include in any Monthly Progress Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and provide any such documents as may be reasonably requested by Buyer. In addition, Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which it is aware which could materially impact its ability to meet the Milestone Schedule.

6.2 Milestone Delay Damages and Recovery Plan. If Seller fails to achieve any milestone listed on the Milestone Schedule on or before the applicable deadline listed therein (unless such failure is excused pursuant to Section 2.10.2 or there has been an extension pursuant to Section 6.1), Seller may cure such failure; provided, that:

6.2.1 Within five (5) Business Days prior to any such failure, Seller submits to Buyer (i) a written description of the reason for the anticipated failure, (ii) the date Seller expects it will achieve completion of the applicable milestone (“Milestone Extension Date”), (iii) a written recovery plan for completing all necessary work to achieve completion of the missed milestone, the remaining milestones, and the Initial Delivery Date by the Guaranteed Initial Delivery Date (including plans for accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) (the “Recovery Plan”) and (iv) any required Daily Delay Damages in accordance with Section 2.10.1. The Recovery Plan shall also include an updated Milestone Schedule with revised dates for each of the remaining milestones, which updated Milestone Schedule shall reflect the payment of any Daily Delay Damages in accordance with Section 2.10.1. Any such Recovery Plan shall be subject to the approval of Buyer, such approval not to be unreasonably withheld or delayed.

6.2.2 Seller shall commence the work contemplated by the Recovery Plan after approval thereof by Buyer.

6.2.3 Seller shall be solely responsible for any costs or expenses incurred by Seller as a result of the formulation and implementation of the Recovery Plan.

6.2.4 If Seller fails in any material respect, as reasonably determined by Buyer, to: (i) meet the requirements of the Recovery Plan; (ii) make sufficient progress in effecting the Recovery Plan; or (iii) achieve completion of the missed milestone by the Milestone Extension Date, such failure shall be subject to a further attempt to cure only if, in Buyer’s reasonable .

6.3 Inspection Rights. Buyer shall have the right, upon reasonable prior notice to Seller, during the Term to enter onto the Site, inspect the Project and otherwise inspect or audit

Seller's EPC Contracts and its books and records in order to verify Seller's compliance with the Milestone Schedule and the terms of this Agreement.

ARTICLE 7 COMMISSIONING; TESTING

7.1 Testing Costs. Seller will, at times and for durations reasonably agreed to by Buyer, conduct necessary testing set forth in this Article 7 to assess whether the Project is functioning properly and the Energy Storage System is able to respond to Buyer Dispatch Notices or CAISO dispatch instructions. If a test is deemed a "Buyer Cost Test" hereunder, Buyer shall be obligated to pay for the electricity required to charge the Energy Storage System relating to such test, and Energy from the Energy Storage System shall be treated as dispatched pursuant to Dispatch Notices by Buyer hereunder. If a test is deemed a "Seller Cost Test" hereunder, (a) Seller shall be responsible for paying (i) the costs of all electricity required to charge the Energy Storage System relating to such test, (ii) the costs of purchasing, scheduling and delivering Charging Energy necessary to recharge the Energy Storage System so as to restore the Stored Energy that existed immediately prior to such test, and (iii) all CAISO costs and charges related to such test, and (b) Seller shall be entitled to all CAISO revenues and other revenues associated with the Energy delivered from the Energy Storage System during such test. If a Seller Cost Test is performed during any period during which Buyer is the Scheduling Coordinator for the Project, Buyer shall pay Seller such revenues in the month following Buyer's receipt of such revenues.

7.2 Commercial Operation Test. At least seven (7) Business Days prior to the Initial Delivery Date, but no earlier than thirty (30) days prior to the Initial Delivery Date, Seller shall schedule and complete a Commercial Operation test for the Energy Storage System ("Commercial Operation Test"). Such Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7 hereto and shall be deemed a Buyer Cost Test. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve Commercial Operation by the Guaranteed Initial Delivery Date and Buyer will reasonably cooperate with Seller to meet such deadline. The Commercial Operation Test shall establish the initial level of Contract Capacity and Tested Round-Trip Efficiency Rate for purposes of calculating the Monthly Capacity Payment under Section 9.2.

7.3 Annual Contract Capacity Testing. At least once per Contract Year after the initial Contract Year, upon no less than 24 hours prior Notice to Seller, subject to Article 17 and the Availability Notices delivered by Seller hereunder, Buyer shall schedule and complete a Contract Capacity Test in accordance with Appendix 7. Such Contract Capacity Test shall be deemed a Buyer Cost Test unless the results of such test demonstrate that the actual Contract Capacity has been reduced by more than two percent (2%) from the results of the most recent tests, in which case Buyer may (but is not obligated to) deem such test a Seller Cost Test. No more frequently than once per calendar quarter, Seller shall have the right to run a retest of the Contract Capacity Test at any time upon 24 hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). Buyer shall have the right, exercisable in its sole and absolute discretion to deem such Seller-requested retest as either a Seller Cost Test or a Buyer Cost Test. For all purposes of this Agreement, including Section 1.1.1 and Appendix 9.2, the Contract Capacity determined pursuant to a Contract Capacity Test shall become the new Contract Capacity at the beginning of the day following the completion of the test, subject to the limitations in Section 1.1.1.

7.4 Efficiency Rate Testing. From time to time during the Delivery Period, upon no less than forty-eight (48) hours prior Notice to Seller, and provided that the Maximum Lifetime Delivered Energy Amount has not yet been reached, Buyer may schedule and complete an Efficiency Rate Test in accordance with Appendix 7. The Efficiency Rate Test shall be deemed a Buyer Cost Test. No more frequently than once per calendar quarter, Seller shall have the right to run a retest of an Efficiency Rate Test at any time upon 24 hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). Buyer shall have the right, exercisable in its sole and absolute discretion to deem such Seller-requested retest as either a Seller Cost Test or a Buyer Cost Test. For all purposes of this Agreement, including Sections 1.1.2, 1.2.2 and Appendix 9.2, the Tested Round-Trip Efficiency Rate determined pursuant to an Efficiency Rate Test shall become the new Tested Round-Trip Efficiency Rate at the beginning of the day following the completion of the test. For the avoidance of doubt, Buyer shall not schedule an Efficiency Rate Test from and after the time that the Maximum Lifetime Delivered Energy Amount has been reached.

7.5 Seller-Initiated Tests. Seller may conduct any other discretionary tests, at times and for durations reasonably agreed to by Buyer (provided that it shall be deemed reasonable for Buyer to require such discretionary test to be performed on a day in which Buyer has not dispatched the Energy Storage System), that Seller deems necessary for purposes of reliably operating the Project or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) ("Seller Initiated Test"). All such Seller Initiated Tests shall be considered Seller Cost Tests, unless any such test is conducted during a time during which Buyer has dispatched the Energy Storage System, in which case such test will be deemed a Buyer Cost Tests. Buyer shall (at Seller's request and in Buyer's capacity as the Scheduling Coordinator hereunder) take commercially reasonable efforts to submit schedules to CAISO in accordance with the Tariff, Applicable Laws, and Accepted Electrical Practices for the Product delivered in connection with each such Seller Initiated Test. Seller shall notify Buyer of any Seller-Initiated Test no later than 24 hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices).

7.6 Independent Witness. Buyer shall be entitled to have an independent third party witness any testing under this Article 7, provided that (a) such third party enters into a confidentiality agreement reasonably satisfactory to Seller, and (b) Buyer is responsible for all costs, expenses and fees payable or reimbursable to such third party.

7.7 Test Results. Seller will provide all CAISO certifications (including Commercial Operation, CAISO Certification, and CAISO Ancillary Services Certification) test results for the Energy Storage System within three (3) Business Days of Seller's receipt for any initial or subsequent test throughout the Term of this Agreement.

ARTICLE 8

SELLER'S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

8.1 Seller's Operation Obligations.

8.1.1 When notified of a dispatch by Buyer (or the CAISO), Seller shall operate the Project in accordance with Accepted Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including without limitation the

standards established by the California Electricity Generation Facilities Standards Committee, pursuant to Public Utilities Code Section 761.3, and enforced by the CPUC, and CAISO-mandated standards, as set forth in Section 5 of the Tariff (collectively, "Industry Standards"). In addition, Seller shall at all times maintain and operate the Energy Storage System in a safe manner as required by Accepted Electrical Practices, Industry Standards, statutes, regulations or other Applicable Law.

8.1.2 Seller shall maintain a daily operations log for the Project and the Energy Storage System which shall include but not be limited to information on power production, electricity consumption and efficiency (if applicable), availability, hourly average Stored Energy of the Energy Storage System, hourly average Maximum Energy Capacity of the Energy Storage System, maintenance performed, outages, changes in operating status, inspections and any other significant events related to the maintenance or operation of the Project. In addition, Seller shall maintain all records applicable to the Project, including the electrical characteristics of the Project and settings or adjustments to the control equipment and protective devices of the Project. Information maintained pursuant to this Section 8.1.2 shall be provided to Buyer, within 15 days of Buyer's request.

8.1.3 Seller shall maintain accurate records with respect to the Project's Commercial Operation Test and annual Contract Capacity Tests; including the outcomes of such Tests.

8.1.4 Seller shall maintain and make available to Buyer and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards, including those related to safety. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Industry Standards or Applicable Laws.

8.1.5 Buyer or the CAISO may require Seller, at Seller's expense, to demonstrate to Buyer's commercially reasonable satisfaction the correct calibration and operation of Seller's Protective Apparatus at any time Buyer or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the Participating Transmission Owner's electric system or CAISO Grid. Buyer will reimburse Seller for all costs Seller incurs in such demonstration if the demonstration shows that the Protective Apparatus was functioning properly.

8.1.6 Seller shall, during the Term, only employ appropriately qualified (determined in Seller's reasonable opinion consistent with Accepted Electrical Practices) personnel for the purposes of operating and maintaining the Project. Seller shall at all times require such personnel to adhere to all applicable safety standards in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards.

8.2 Seller's Maintenance and Repair Obligations.

8.2.1 Seller shall inspect, maintain and repair the Project, and any portion thereof, in accordance with applicable Industry Standards and Accepted Electrical Practices. Seller shall maintain and deliver maintenance and repair records of the Project to Buyer's scheduling representative upon request.

8.2.2 Seller shall promptly make all necessary repairs to the Project, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement.

ARTICLE 9 COMPENSATION

9.1 Compensation. Compensation to Seller shall consist of (a) a Monthly Capacity Payment calculated in accordance with Section 9.2, and (b) a Variable O&M Charge calculated in accordance with Section 9.3. The Monthly Capacity Payment and Variable O&M Charge will be paid each month, in arrears in accordance with Article 10, for each month of the Delivery Period.

9.2 Monthly Capacity Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly capacity payment (the “Monthly Capacity Payment”), except that Buyer shall not be required to pay the Monthly Capacity Payment for any month in which the Equivalent Availability Factor is less than 0.90 or the Round-Trip Efficiency Rate Factor is less than Round-Trip Efficiency Rate Minimum Threshold. The Monthly Capacity Payment for the Project payable each month of the Delivery Period shall be determined in accordance with the calculation set forth in Appendix 9.2. For the month in which the Initial Delivery Date occurs, the Monthly Capacity Payment will be prorated for the remaining days of that month. For the last month of the Term, the Monthly Capacity Payment will be prorated for the number of days remaining in the Term.

9.3 Variable O&M Charge. Buyer shall pay Seller a Variable O&M Charge in accordance with the calculations set forth in Appendix 9.3.

ARTICLE 10 PAYMENT AND BILLING

10.1 Billing Period. The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payment). As soon as practicable after the end of each month (but no later than ten (10) Business Days after the end of each month), each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, together with all supporting documentation and calculation necessary to evidence all amounts charged thereunder.

10.2 Timeliness of Payment. All undisputed amounts in invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the 20th day of each month, or the 10th day after receipt of the invoice, or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable methods, to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

10.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice, or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error, within 24 months of the date of invoice or adjustment. Any dispute with respect to an invoice is waived unless the other Party

receives Notice under this Section 10.3 within 24 months after the invoice is rendered or any specific adjustment to the invoice is made. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon written request (the "Overpayment Notice") or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Default Rate from and including the date that is two (2) Business Days following receipt of an Overpayment Notice to but excluding the date repaid or deducted by the Party receiving such overpayment.

10.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

10.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, interest and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 11 CREDIT AND COLLATERAL

11.1 Financial Information. If requested by one Party, the other Party shall deliver:

11.1.1 Within 120 days following the end of each fiscal year, a copy of its (and, if applicable, its Guarantor's) annual report containing audited consolidated financial statements for such fiscal year;

11.1.2 Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its (and, if applicable, its Guarantor's) quarterly report containing unaudited consolidated financial statements for such fiscal quarter.

A Party shall have satisfied this requirement if such statements are posted and publicly available within the time frames specified above on a Party or its Guarantor's corporate website or the U.S. Securities and Exchange commission website (<http://www.sec.gov/>). In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

11.2 Seller's Credit Requirements.

11.2.1 Credit Requirement During Pre-Construction Period. From the Effective Date to the CP Satisfaction Date, Seller shall provide and maintain Performance Assurance in an amount equal to \$[] **[NOTE to Bidders: Please see RFO document for collateral requirements.]** (the “Pre-Construction Security”) in order to secure Seller’s obligations hereunder. Except to the extent Seller elects to apply the Pre-Construction Security to the Construction Period Security, Buyer shall promptly return to Seller the unused portion of the Pre-Construction Security after the earlier of (a) the date on which Seller has delivered the Construction Period Security, and (b) termination of the Agreement by either Party under Section 2.5.2(b).

11.2.2 Credit Requirement During Construction Period. From the CP Satisfaction Date to the Initial Delivery Date, Seller shall provide and maintain additional Performance Assurance so that the total amount of Performance Assurance is equal to \$[insert] **[NOTE to Bidders: Please see RFO document for collateral requirements.]** (the “Construction Period Security”) in order to secure Seller’s obligations hereunder. Except to the extent Seller elects to apply the Construction Period Security to the Delivery Period Security, Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (a) the date on which Seller has delivered the Delivery Period Security, and (b) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.

11.2.3 Credit Requirements During Delivery Period. Throughout the Delivery Period, Seller shall provide and maintain Performance Assurance to Buyer in an amount equal to \$[insert] **[NOTE to Bidders: Please see RFO document for collateral requirements]** to secure Seller’s obligations hereunder (“Delivery Period Security”). Buyer shall promptly return to Seller the unused portion of the Delivery Period Security after the following have occurred: (a) the Delivery Period has expired or terminated early; and (b) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

11.3 Form of Performance Assurance.

11.3.1 Cash. In the event that Seller elects to provide cash as the applicable Performance Assurance, Buyer shall deposit (or cause to be deposited) such cash in an account bearing interest at the rate per annum equal to the Interest Rate. Interest shall be calculated monthly (without compounding) at a monthly rate of 1/12 of such Interest Rate, shall be retained in such account, and shall be applied toward the amount of the applicable Performance Assurance, and any amount in excess of the required amount of applicable Performance Assurance on the last Business Day of each calendar year shall be returned to Seller.

11.3.2 Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit. If Seller fails

to renew or cause the renewal of any outstanding Letter of Credit on a timely basis as provided in this Section 11.3.2, Buyer shall have the right to draw the entire amount of such Letter of Credit.

(b) Upon, or at any time after it has been determined that Seller has forfeited all or part of its Pre-Construction Security, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that Seller has forfeited all or part of its Pre-Construction Security in the amount set forth in Section 2.3.1 or 2.5.2 as applicable. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be for the account of Buyer.

(c) In the event Seller incurs Daily Delay Damages pursuant to Section 2.10.1, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit one or more certificates specifying that such Daily Delay Damages have been incurred. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be for the account of Buyer in satisfaction of Seller's obligations hereunder.

(d) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then Buyer may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be used to offset Buyer's damages and to the extent in excess of Buyer's damages shall be deemed Performance Assurance as security for the Seller's obligations to Buyer and Buyer shall at all times have the exclusive dominion and control of, and at no time shall Seller have any rights or powers to direct or control such cash proceeds. Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (i) for any failure to provide sufficient Performance Assurance or (ii) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(e) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.

11.3.3 Guaranty. Performance Assurance provided in the form of a Guaranty Agreement, if offered from Seller, shall be from a Guarantor reasonably acceptable to Buyer and satisfying the following: (i) the Guarantor shall maintain a Credit Rating of at least ["BBB-"] by S&P or ["Baa3"] by Moody's and (ii) a tangible net worth of at least \$[XX] Billion. **[NOTE to Bidders: subject to credit review.]**

11.4 First Priority Security Interest. To secure Seller's performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Priority Security Interest") in, and lien on (and right of setoff against), and assignment of, Seller's rights in respect of the Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action and execute all such documents, instruments, agreements and certifications (to be effective as the same time as such Performance Assurance is required to be provided) as Buyer reasonably requires in order to perfect Buyer's Priority Security Interest in, and lien on (and right of setoff against), such

collateral, any and all amounts deposited therein, and any and all proceeds resulting therefrom or from the liquidation thereof. In addition, Seller authorizes Buyer to file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Priority Security Interests. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer may do any one or more of the following:

11.4.1 Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;

11.4.2 Exercise its rights of setoff against any and all property of Seller in Buyer's possession;

11.4.3 Draw on any outstanding Letter of Credit issued for its benefit; or

11.4.4 Liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

11.5 Subordinated Security Interest and Mortgage.

11.5.1 Grant of Subordinated Security Interest. To secure Seller's performance of its obligations under this Agreement, Seller and Buyer, as the case may be, shall no later than the CP Satisfaction Date each execute, deliver, file and, record, as appropriate, and maintain in full force and effect throughout the period from the CP Satisfaction Date until the expiration of the Term and satisfaction by Seller of all of its obligations hereunder, separate agreements, documents, or instruments under which Seller will grant to Buyer, in a form reasonably acceptable to Buyer, fully perfected security interests and/or mortgage liens in the Project and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or operate the Project (collectively the "Subordinated Security Interest"). The Subordinated Security Interest shall be subordinate only to the security interests of Lenders except as set forth below. The Parties shall reasonably promptly execute when requested, a lien subordination agreement (the "Subordination Agreement") by and among each Lender, (or an agent on behalf of the Lenders), Buyer and Seller relating to the Subordinated Security Interest, in form and substance reasonably requested by the Lender and reasonably acceptable to Buyer. Among other provisions, the Subordination Agreement shall include provisions whereby

11.5.2 until all debt and other obligations owing to the Lenders have been paid in full (i) the Subordinated Security Interest shall be fully subordinate to the security interests of the Lenders, (ii) Buyer shall not exercise any remedies in respect of the Subordinated Security Interest, (iii) Buyer shall not take any action to contest the validity or to diminish the priority position of the Lender's security interests; and

11.5.3 the Lenders shall provide Buyer with (i) an option to purchase from the Lenders at full value the debt (at 100% of the principal balance thereof, plus all accrued interest thereon) and other obligations owing to the Lenders within a period reasonably acceptable to the Lenders (such period to be specified in the Subordination Agreement) prior to the time the Lenders commence any right or remedy to foreclose on their collateral, and (ii) the right to exercise remedies in respect of the Subordinated Security Interest if (A) Buyer shall have guaranteed the debt and other obligations owing to the Lenders in a form acceptable to the Lenders and Buyer satisfies the creditworthiness standards established by the Lenders (all on such terms and conditions to be specified in the Subordination Agreement) or (B) the Lenders shall not have commenced foreclosure under the Lenders' liens for such period or periods as are specified (along with related conditions) in the Subordination Agreement and are acceptable to the Lenders, after Buyer's notice of its intention to exercise its remedies, provided, however, that in either case (ii)(A) or (ii)(B) under this clause (b), any exercise of any remedies to enforce the Subordinated Security Interest shall be subject to the continued priority of the Lenders' liens; provided, however, that nothing contained therein shall limit Buyer's rights and remedies in respect of the Priority Security Interest or Buyer's right to receive the payment of money or other performance in accordance with this Agreement and Buyer may exercise its rights and remedies in accordance with the terms hereof (other than through the exercise of any remedy relating to any Subordinated Security Interest). The Subordinated Security Interest shall not include the pledge or assignment of any ownership interest in Seller.

11.5.4 Other Actions By Seller. All title insurance policy costs and all costs of executing, delivering, filing, and recording the Security Documents (other than state fees and taxes which shall be at Buyer's expense) in respect of the Subordinated Security Interest shall be at Seller's expense, which in any event shall not include any legal fees of Buyer. The Security Documents in respect of the Subordinated Security Interest shall contain financial and operating covenants ("Covenants") reasonably necessary to preserve and maintain the value of the Subordinated Security Interest and substantially similar to those in favor of Lender in Lender's security documents ("Lender's Security Documents"). In addition, Seller authorizes Buyer to file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Subordinated Security Interest. The granting of the Subordinated Security Interest shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any Event of Default by Seller or Early Termination Date. The Subordinated Security Interest shall be discharged and released, and Buyer shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term and satisfaction by Seller of all of its obligations hereunder. Seller shall reimburse Buyer for its reasonable costs associated with the discharge and release of the Subordinated Security Interest.

11.5.5 Transfer of Required Permits. The Security Documents in respect of the Subordinated Security Interest shall provide that if Buyer acts to obtain title to the Project pursuant to the exercise of remedies thereunder, Seller shall take all steps necessary to legally transfer all authority to dispatch the operations of the Project as provided in its Required Permits to Buyer as necessary for Buyer to operate the Project, and shall diligently prosecute and cooperate in such transfers.

ARTICLE 12 COLLATERAL ASSIGNMENT

12.1 Consent to Collateral Assignment. Subject to the provisions of this Article, Seller shall have the right to assign all its rights, title and interests in the Project, Site, other real, personal and other of its properties, and this Agreement as collateral for any financing or refinancing of the Project. Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement shall be in form and substance customary in the industry and reasonably agreed to by Buyer, Seller and Lender.

ARTICLE 13 GOVERNMENTAL AND ENVIRONMENTAL CHARGES

13.1 Governmental Charges. Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Government Authority (“Governmental Charges”) on or with respect to the Product prior to the Energy Delivery Point. For the avoidance of doubt, such Governmental Charges shall include ad valorem taxes of Seller that are related to the Project, and franchise or income taxes that are related to the sale of the Product to Buyer and which arise or are imposed prior to the Energy Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Product which arise or are imposed at and from the Energy Delivery Point. In the event Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charge from the sum due to Seller under Article 10 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. This Section shall not apply to CAISO charges, penalties, costs, or revenues associated with operation of the Project or transmission of the Product allocated pursuant to Section 14.3.

13.2 Compliance with Laws and Indemnification. Seller shall be responsible for obtaining and maintaining all Required Permits, and shall construct and operate the Project in compliance with all Applicable Laws and Permit Requirements for the Term of the Agreement, including without limitation any Applicable Law related to safety, and any new or revised Required Permits or Applicable Laws that become effective during the Term. Seller shall be solely responsible for any fines, penalties or other charges which result from Seller’s failure to obtain or maintain such Required Permits and/or operate the Project in accordance with Applicable Laws and Permit Requirements. No such fines, penalties or charges shall be passed through to Buyer.

13.3 Environmental Costs. Seller shall be solely responsible for all Environmental Costs with respect to the Project.

ARTICLE 14 SCHEDULING COORDINATOR

14.1 Buyer Scheduling Coordinator. At least thirty (30) days prior to the beginning of testing, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller’s Scheduling Coordinator for the Project

effective as of the start-up, testing and commissioning of the Project. During the Term, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer shall submit schedules to the CAISO in accordance with Tariff protocols for Day-Ahead and Hour-Ahead Schedules and Supplemental Energy and Ancillary Services bids for the Energy Storage System, and provide such other services described in this Article. Buyer will submit bids to the CAISO that are in accordance with the Operating Restrictions of the Project as specified in Appendix 1.1. Buyer may withhold all Monthly Capacity Payments that would otherwise be due to Seller until Buyer is fully authorized as the Scheduling Coordinator for the Project. Upon Buyer's reasonable determination that it is fully authorized to act as Scheduling Coordinator for each Energy Storage System, Buyer shall pay all withheld Monthly Capacity Payments on the next applicable payment date for Monthly Capacity Payments. **[NOTE to Bidders: parties to discuss SC duties during pre-commercial operation testing.]**

14.2 Notices. Buyer shall submit all notices and updates required under the Tariff regarding the Project's status to the CAISO, including, but not limited to, all Outage Management System ("OMS") Outage Requests, OMS Forced Outages, or CAISO Forced Outage Reports. In accordance with this Article and Article 18, Seller will cooperate with Buyer to provide such notices and updates.

14.3 CAISO Costs and Revenues. Except as otherwise set forth below or in this Agreement, Seller shall be responsible for all CAISO charges and penalties associated with the operation of the Project, transmission of Delivered Energy to the Energy Delivery Point, and receiving at and transmitting Charging Energy from the Energy Delivery Point, and Buyer shall be responsible for all CAISO charges and penalties associated with receiving Delivered Energy at and transmitting Delivered Energy from the Energy Delivery Point and transmission of Charging Energy to the Energy Delivery Point. Buyer shall be responsible for CAISO costs (including penalties and other charges) and receive all CAISO revenues (including credits and other payments) incurred as a result of providing Scheduling Coordinator services, including costs and revenues associated with CAISO dispatches. Notwithstanding anything contained herein to the contrary, Seller shall be responsible for all CAISO charges or payments incurred as a consequence of the Project not being available, Seller failing to notifying Buyer of outages in a timely manner as set forth in Article 17, or deviations from Scheduled Energy that are attributable to the operation of the Project, including, but not limited to Uninstructed Imbalance Energy charges, Uninstructed Deviation Penalties and Ancillary Services No-Pay. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

14.4 CAISO Settlements. Buyer shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for all CAISO charges or payments ("CAISO Charges Invoice") for which Seller is responsible under this Agreement in accordance with the applicable billing and payment methodologies utilized for the specific CAISO charge type as set forth in the Tariff and/or related CAISO procedure. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO Charges. Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges

Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

14.5 Terminating Buyer's Designation as Scheduling Coordinator. The Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Project as of 11:59 p.m. on the date that is the earlier of the expiration of the Term or the Early Termination Date ("SC Replacement Date"), regardless of which Party designated such expiration or termination date. The necessary actions include the following, to be performed no later than 30 days prior to such date: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator for the Project to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator for the Project effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting and reaching agreement about terms with any replacement Scheduling Coordinator.

14.6 CAISO Sanctions. If during the Delivery Period, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Project or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

14.7 Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Project. Buyer, as Scheduling Coordinator, shall not change such data without Seller's prior written consent.

ARTICLE 15

CHARGING, DISCHARGING AND OPERATING RESTRICTIONS

15.1 Availability Notice. Subject to Section 15.6, during the Delivery Period (or earlier to enable dispatches and deliveries on the Initial Delivery Date), no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer with an hourly schedule of the Available Capacity that the Project is expected to have for each hour of such schedule day (the "Availability Notice"). Seller will notify Buyer immediately if the Available Capacity of the Project may change after Buyer's receipt of an Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices. Seller shall provide Availability Notices using the form attached in Appendix 15.1 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.

15.2 Charging Energy Responsibilities. Except as expressly set forth in this Agreement, during the Delivery Period, Buyer shall be responsible, at Buyer's sole cost and expense, for managing, purchasing, scheduling, and delivering all of the Charging Energy to the Energy Delivery Point. Seller shall take any and all action necessary to deliver the Charging Energy from the Energy Delivery Point to the Energy Storage System, including maintenance, repair or

replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Energy Delivery Point to the Energy Storage System.

15.3 Dispatch Notices. Subject to the Availability Notices delivered by Seller hereunder, Buyer will have the right to dispatch the Energy Storage System for charging or discharging seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically (in the forms attached to this Agreement in Appendix 15.3) or as directed by CAISO via ADS, and subject to the requirements and limitations set forth in this Agreement and the Operating Restrictions. Subject to Section 15.5, each Dispatch Notice will be effective unless and until Buyer modifies such Dispatch Notice by providing Seller with an Updated Dispatch Notice. If an electronic submittal is not possible for reasons beyond Buyer's or Seller's control, Buyer may provide Dispatch Notices and Updated Dispatch Notices by (in order or preference) electronic mail, telephonically, or facsimile transmission to Seller's personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices and Updated Dispatch Notices will be made in accordance with Market Notice Timelines for dispatches as specified in the Tariff. In dispatching the Project, Buyer, as Scheduling Coordinator for the Project, shall assume a Round-Trip Efficiency Rate equal to the then most-recent Tested Round-Trip Efficiency Rate.

15.4 CAISO Dispatch. Any dispatch by the CAISO for any reason, whether pursuant to an RMR Contract or in connection with any Seller's must-offer obligations or otherwise, shall be deemed to be dispatches by Buyer, and the Energy dispatched is for Buyer's benefit hereunder, and Buyer shall pay all associated costs for such CAISO dispatches (including but not limited to the required electric recharge quantities) in accordance with the terms of this Agreement as if such dispatches were directed by Buyer. Buyer shall be entitled to receive and retain for its own account any and all CAISO revenue for such dispatches, including without limitation any availability payments under an RMR Contract for the Project. Charging Energy costs shall be included in any costs recoverable from the CAISO associated with a CAISO dispatch.

15.5 Operating Restrictions. All Operating Restrictions associated with the Product are specified on Appendix 1.1, and are subject to change from time to time based on changes in Applicable Laws or Required Permits, in each case, occurring after the CP Satisfaction Date. If Buyer submits a Dispatch Notice or an Updated Dispatch Notice that does not conform with the Operating Restrictions, then Seller shall notify Buyer of the non-conformity, and Buyer will modify its Dispatch Notice or Updated Dispatch Notice to conform to the applicable Operating Restrictions. Until such time as Buyer submits a modified Dispatch Notice or Updated Dispatch Notice, Seller shall deliver the Product in accordance with the Operating Restrictions.

15.6 Daily Operating Report. Seller shall provide Buyer the Daily Operating Report, as attached in Appendix 15.6, the day immediately after each operating day, for the Project.

15.7 Writing Requirements. In documenting and confirming Dispatch Notices, conversations between the Parties' personnel and contractors may be recorded by tape or other electronic means and any such recording will satisfy any "writing" requirements under Applicable Law.

15.8 Communication Protocols. Parties shall agree to the communication protocols outlined in Appendix 15.8 to facilitate exchange of information between the parties.

ARTICLE 16

METERING, COMMUNICATIONS, AND TELEMETRY

16.1 Electric Metering, Communication, Telemetry, and Access. Seller shall install, activate and maintain metering, communication and telemetry equipment as required by the Tariff, this Agreement, and Seller's [Large/Small] Generator Interconnection Agreement, including without limitation, the installation of separate CAISO revenue meter for the Project to ensure a separate resource ID with the CAISO for the Project, separate communication equipment for the Project, and other requirements as may be necessary to permit separate dispatch and identification of costs for the Project. Communication equipment must be capable at a minimum of supporting the Communication Protocols in Appendix 15.8. Seller shall provide Buyer access to the information provided to CAISO under the Tariff.

16.1.1 Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Accepted Electrical Practices and the Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.

16.1.2 Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement, deliveries shall be measured by reference to Seller's check-meters, if any are installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and reasonable approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy under the terms of the Meter Service Agreement was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

16.1.3 MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate under the Meter Service Agreement, the Delivered Energy or Charging Energy is increased or decreased, the revised Delivered Energy or Charging Energy (as applicable) shall be used for purposes of calculating payments. If any of such amounts for any period have already been calculated using the previous amount of Delivered Energy or Charging Energy, they shall be recalculated using the revised amount of Delivered Energy or Charging Energy (as applicable). If the recalculation changes the amount payable for the period in question, revised payments shall be made by Buyer or Seller, as applicable, in accordance with Section 10.3.

16.2 Retail Electric Meter. To the extent the Project is not designed in a manner which allows or requires it to serve Station Use, then during the Delivery Period, Seller shall have installed and maintained an electric retail meter as further described in Appendix 1.2.2 in accordance with the Project's applicable retail electric service provider's tariff rules for retail electric service.

ARTICLE 17. OUTAGES

17.1 Scheduled Outages.

17.1.1 No later than July 1 of each Contract Year during the Delivery Period, and at least sixty (60) days prior to the anticipated Initial Delivery Date, Seller shall submit to Buyer Seller's schedule of proposed Scheduled Outages ("Outage Schedule") for the following calendar year in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Industry Standards, accommodate Buyer's requests regarding the timing of any Scheduled Outage. Seller may propose changes to any previously scheduled outage 15 days prior to such scheduled outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer's receipt thereof, in Buyer's sole discretion but consistent with Industry Standards and Accepted Electrical Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Scheduled Outages with the CAISO. Seller will communicate to Buyer all changes to a Scheduled Outage and estimated time of return of the Project as soon as practicable after the condition causing the change becomes known to Seller.

17.1.2 If reasonably required in accordance with Accepted Electrical Practices, Seller may perform maintenance at a different time than, maintenance scheduled pursuant to Section 17.1.1. Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Project, as a "Resource Adequacy Resource" that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 17.1.2 to periods when Buyer does not reasonably believe the Project will be dispatched.

17.2 No Scheduled Outages During Summer Months. Except as scheduled by the Parties under Section 17.1.2, no outages shall be scheduled or planned from each June 1 through October 31 during each year of the Delivery Period. In the event that the Seller has a previously Scheduled Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Scheduled Outage.

17.3 Notice of Unscheduled Outages. Seller shall notify Buyer by telephoning Buyer's Dispatch Desk no later than ten (10) minutes following the occurrence of an Unscheduled Outage, or if Seller has knowledge that an Unscheduled Outage will occur, within twenty (20) minutes of determining that such Unscheduled Outage will occur, utilizing an outage notification form reasonably prescribed by Buyer by Notice to Seller. Seller shall relay outage information to Buyer as required by the Tariff within twenty (20) minutes of the Unscheduled Outage and to CAISO in accordance with the outage notification requirements of the CAISO Tariff. Seller will communicate to Buyer the estimated time of return of the Project as soon as practical after Seller has knowledge thereof. Seller shall be responsible for all outage coordination communications with the CAISO.

17.4 Inspection. In the event of an Unscheduled Outage, Buyer shall have the option to inspect the Project and all records relating thereto on any Business Day and at a reasonable time

and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection, and shall not interfere with work on or operation of the Project.

17.5 Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unscheduled Outages or Scheduled Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any Applicable Laws. Seller shall also report all Unscheduled Outages or Scheduled Outages in the Daily Operating Report.

ARTICLE 18 FORCE MAJEURE

18.1 No Default for Force Majeure. A Party shall not be in default in the performance of its obligations under this Agreement when and to the extent that the failure or delay of its performance is due to an event of Force Majeure. However, a failure to make payments when due shall not be excused; except to the extent such failure is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

18.2 Force Majeure Claim. If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected. The following procedure shall apply in the event there occurs a Force Majeure:

(a) The Claiming Party shall, within five (5) Business Days after becoming aware of its delay in performing or inability to perform due to such event, give the other Party written Notice describing the particulars of the occurrence including what date Claiming Party became aware of the occurrence of such event and an estimate of the event's anticipated duration and effect upon the performance of Claiming Party's obligations, and any action being taken to avoid or minimize its effect. To the extent permitted by Applicable Law, failure to provide such five (5) Business Day Notice shall be deemed conclusive evidence that the claimed event of Force Majeure either did not occur or did not impact the non-performing Party's ability to perform its obligations hereunder in any fashion and thus the non-performing Party shall not be entitled to relief hereunder as a result of such event;

(b) The Claiming Party, within five (5) Business Days of providing Notice of occurrence of the Force Majeure under clause (a) above, shall provide evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement. The Claiming Party shall have a continuing obligation to deliver to the other Party regular updated reports and any additional documentation and analysis supporting its claim regarding a Force Majeure event promptly after such information is available to the Claiming Party. The burden of proof shall be on the Claiming Party regarding the occurrence of the Force Majeure event;

(c) The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;

(d) The Claiming Party shall have a duty: (i) to use commercially reasonable efforts to mitigate the duration and impacts arising from the occurrence and effects of such Force Majeure, (ii) to continue to perform its obligations hereunder not affected by such

event, and (iii) to remedy its inability to perform, as applicable. This subsection shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. The Parties agree and understand that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party; and

(e) As soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption. Within sixty (60) Business Days after the later to occur of (the “Allowable Claim Period”): (a) the date the Force Majeure event has ended, or (b) the expiration of the five (5) Business Day period in which the Claiming Party is entitled to deliver a Notice as set forth in Section 18.2(b), above, the Claiming Party shall give Notice to the other Party of: (w) the length of time such Force Majeure event was in effect, (x) which portions of the Project were affected by such Force Majeure event, if applicable, and (y) the effect the Claiming Party claims such Force Majeure event had on the performance of its obligations hereunder.

18.3 Termination for Force Majeure. If any Force Majeure event shall suspend performance by a Claiming Party for more than six (6) months from the date of Notice provided by such Claiming Party in Section 18.2(a), then, unless such Force Majeure event was caused by the Event of Default of the other Party or other delay or failure of the other Party in performing a material obligation under this Agreement, such other Party may, at any time following the end of such six (6)-month period, terminate this Agreement upon thirty (30) days prior written Notice to the Claiming Party, without further obligation by the terminating Party, except as to the payment of any costs and liabilities incurred prior to the effective date of such termination. Except to the extent Buyer may be entitled to Daily Delay Damages under Section 2.10.1, if this Agreement is terminated by Buyer under this Section 21.3, then within five (5) days following such termination, Buyer shall return to Seller any and all Letters of Credit, cash deposit, or any other forms of security or credit support previously provided by Seller and held at that time by Buyer.

ARTICLE 19

REPRESENTATIONS, WARRANTIES AND COVENANTS

19.1 Representations and Warranties of Both Parties. As of the Effective Date and/or the CP Satisfaction Date (as applicable), each Party represents and warrants to the other Party that:

19.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

19.1.2 As of the CP Satisfaction Date, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, other than with respect to Seller, any of those Required Permits that satisfy all of the following: it is not required prior to the start of construction of the Project, it is not subject to the discretionary action of the applicable Governmental Authority, and it otherwise can be obtained in the ordinary course of business;

19.1.3 The execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;

19.1.4 This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

19.1.5 It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

19.1.6 Except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or in Seller's case, Guarantor, if applicable, any legal proceedings that could materially adversely affect such party's ability to perform its obligations under this Agreement or the Guaranty Agreement, as applicable;

19.1.7 No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

19.1.8 It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

19.1.9 It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

19.1.10 It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product under this Agreement.

19.2 Additional Representations and Warranties of Seller. Seller represents, warrants and covenants to Buyer that:

19.2.1 As of the CP Satisfaction Date and subject to Permitted Liens, Seller has Site Control and will maintain Site Control for the remainder of the Term;

19.2.2 Seller will execute a PGA and MSA (with each Energy Storage System) prior to the Delivery Period, Seller will deliver to Buyer a true and complete copy of such PGA and MSA, and such PGA and MSA, as originally executed by Seller, shall remain in full force and effect throughout the entire Delivery Period, subject to such amendments or modifications as are deemed desirable or necessary by Seller and the CAISO, subject to approval of such amendments or modifications by Buyer, which approval shall not be unreasonably delayed or withheld;

19.2.3 Seller will execute all necessary grid connection, maintenance, or transmission facility services agreements prior to the commencement of the Delivery Period, Seller will deliver to Buyer a true and complete copy of such agreements, and such agreements, as originally executed by Seller, shall remain in full force and effect throughout the entire Delivery Period, subject to such amendments or modifications as are deemed desirable or necessary by Seller and the counter-party to such agreements, subject to approval of such amendments or modifications by Buyer, which approval shall not be unreasonably delayed or withheld; and

19.2.4 As of the Effective Date, Seller has not used, granted, pledged, assigned or otherwise committed to deliver during the Delivery Period any Capacity of the Project to meet the Resource Adequacy requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

19.3 Climate Risk. Seller has considered long-term climate risks to the Project as required by Ordering Paragraph 14 of CPUC decision D.20-08-046.

19.4 Additional Covenants of Both Parties. Each Party covenants that through the Delivery Period:

19.5.1 It shall continue to be duly organized, validly existing and in good standing under the Applicable Laws of the jurisdiction of its formation;

19.5.2 It shall maintain (or obtain from time to time as required, including through renewal, as applicable, prior to such performance) all Governmental Authority approvals and Required Permits necessary for it to legally perform its obligations under this Agreement;

19.5.3 It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions of its governing documents, any contracts to which it is a party or any Applicable Law; and

19.5.4 It shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

19.6 Seller’s Affirmative Covenants.

19.6.1 Seller shall maintain and preserve its existence as a [_____] limited liability company formed under the laws of the State of [_____] and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.

19.6.2 Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of Buyer with respect to its Priority Security Interest and the Subordinated Security Interest furnished pursuant to this Agreement.

19.6.3 Seller covenants throughout the Delivery Period that Seller shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

19.7 Seller’s Negative Covenants.

19.7.1 Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller’s Debt, or issue any disqualified stock, in each case, other than Seller’s Debt incurred, issued, assumed or guaranteed, or disqualified stock issued, in connection with the financing or refinancing of the development, design, procurement, construction, commissioning, testing, owning, operating and maintaining of the Project.

19.7.2 Except for Permitted Liens, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person any lien on Seller's interest in the Site, the Project, or any part thereof or interest therein. Seller shall promptly pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller's interest in the Site, the Project, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Site, the Project or a material part thereof or interest therein. Seller shall promptly notify Buyer of any attachment or imposition of any lien against Seller's interest in the Site, the Project, or any part thereof or interest therein

19.7.3 Reserved.

19.7.4 Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than directly associated with the development, construction, ownership or operation of the Project.

19.7.5 Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

19.7.6 During any period during which a Seller is a Defaulting Party, Seller shall not (i) declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller or (ii) otherwise make any distribution or payment to any Affiliate of Seller (excluding payments to such Affiliates for reasonable expenses related to the operation, maintenance and management of the Project).

19.7.7 Seller will not use, grant, pledge, assign or otherwise commit to deliver during the Delivery Period any Capacity of the Project to meet the Resource Adequacy requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

19.7.8 Seller shall not permit any Lenders that are Affiliates of Seller to have a security interest senior to Buyer's Subordinated Security Interest (excluding any Lender that becomes an Affiliate of Seller as a result of foreclosure or sale in lieu of foreclosure on pledged equity interests of Seller) unless consented to in writing by Buyer, such consent not to be unreasonably withheld.

19.7.9 Seller shall not charge or discharge the Energy Storage System other than (a) as dispatched by Buyer or CAISO pursuant to Article 15, or (b) pursuant to a test in accordance with Article 7.

19.8 Additional Representations, Warranties and Covenants of Buyer. Buyer represents, warrants, and covenants to Seller that:

19.8.1 Buyer shall cooperate with Seller to obtain approval(s) from any applicable Governmental Authorities with respect to governmental approvals needed by Seller.

19.8.2 Buyer shall ensure that Buyer personnel that enter the Site for any reason shall comply at all times with the safety and security procedures established by Seller and Seller's contractor(s).

19.8.3 Buyer shall not schedule, or allow the CAISO or any third party to schedule, the Project in violation of the Operating Restrictions or as otherwise permitted in this Agreement.

19.8.4 Buyer, in its role as Scheduling Coordinator and electricity recharge manager for the Project, shall not violate the Tariff or Industry Standards, or any combination of the foregoing.

ARTICLE 20 LIMITATIONS

20.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PRODUCT, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURE OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. UNLESS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY (OTHER THAN INJUNCTIVE RELIEF AS PROVIDED IN THIS AGREEMENT) ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES TO BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY (OTHER THAN INJUNCTIVE RELIEF AS PROVIDED IN THIS AGREEMENT) ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHATSOEVER UNDER ANY THEORY, INCLUDING WITHOUT LIMITATION, BY STATUTE, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, (PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM), RESULTING FROM A PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER OR TERMINATION OF THIS AGREEMENT. THE PARTIES INTEND THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NOTHING IN THIS SECTION PREVENTS OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS UNDER THE SECURITY DOCUMENTS.

20.2 No Representation by Buyer. Any review by Buyer of the Project or changes thereto, including, but not limited to, the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for Buyer's information. By making such review, Buyer makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Project, and Seller shall in no way represent to any third party that any such review by Buyer of the Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Project by Buyer constitutes any such representation by Buyer. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

ARTICLE 21 RECORDS

21.1 Performance under this Agreement. Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than three (3) years after final payment is made under this Agreement.

21.2 Sarbanes-Oxley and Securities and Exchange Commission Requirements. The Parties acknowledge that accounting principles generally accepted in the United States of America ("GAAP") and SEC rules require Buyer and its independent auditor to evaluate whether Buyer must consolidate Seller's financial information (but not financial information of Seller's constituent members unless deemed to be included in the entity under GAAP). Buyer will require access to certain records, including but not limited to financial records, and personnel of Seller to determine if consolidated financial reporting is required. If Buyer and its independent auditor determine at any time that the Buyer must consolidate the Seller's financial statements to comply with GAAP and/or SEC rules regarding consolidated financial reporting, then:

(a) Buyer shall require from Seller and Seller agrees to provide to Buyer the following during the Term of this Agreement:

(i) Unaudited financial statements of the Seller prepared in accordance with GAAP as of the end of the quarterly period. The financial statements should include quarter to date and year to date information and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);

(ii) Unaudited financial schedules of the Seller, as deemed necessary for Buyer to prepare its consolidated financial statements and related footnotes to the financial statements in accordance with GAAP as of the end of the quarterly period. The financial schedules should include quarter to date and year to date information underlying the financial statements and footnotes to the financial statements and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);

(iii) Access to Seller's accounting and other records, and accounting and management personnel as reasonably determined by both Buyer and Seller so that (A) Buyer's independent auditor or its internal auditors may conduct financial audits (in accordance with the standards of the Public Company Accounting Oversight Board (United States)) as well as internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002) and (B) Buyer

can be provided analytical information, as needed, to enable Buyer to meet its SEC filing requirements, including but not limited to those under Item 2 on Form 10-Q, and Item 7 on Form 10-K, “Management’s Discussion and Analysis of Financial Condition and Results of Operations;”

(iv) Upon the request of Buyer, such certifications by a duly authorized representative(s) of Seller as may be reasonably requested by Buyer (which certifications shall presumptively be reasonable if the certifications are substantially identical to those required by Buyer or its parent of business units of Buyer or its parent); and

(v) As reasonably requested by Buyer, such information or schedules, similar to the items noted in clauses (i)-(iv) above, to enable Buyer to prepare consolidated financial statements and schedules as may be required for Buyer to obtain financing or to prepare other reports as required by regulatory bodies, such as the SEC, for periods other than as of the end of the monthly, quarterly or year to date periods then ended.

(b) If Buyer (i) in its sole discretion determines that the financial statements of the Seller would be considered material to the Buyer or its parent company’s financial statements, financial condition, or internal controls over financial reporting, and (ii) reasonably determines Seller’s internal controls over financial reporting are not operating effectively or have resulted in a control deficiency, Buyer shall provide Notice to Seller. Upon receipt of such Notice, Seller will have thirty (30) days to remediate any deficiency in Seller’s internal controls over financial reporting identified by the Buyer, which Buyer and Buyer’s independent auditor deem to be necessary to ensure Seller’s internal controls over financial reporting are adequate, during or as a result of the audits permitted under Section 21.2(a)(iii) or any other.

(c) As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to Buyer a Notice describing such occurrence in sufficient detail to permit the Buyer to file a report on SEC Form 8-K. Such occurrences include all reportable events on the then current Form 8-K that applies to Buyer and its parent company at such time, including but not limited to a material acquisition or disposition of assets, a material direct financial obligation or off-balance sheet financing arrangement, material litigation, and the execution or termination of a material contract.

(d) Any information provided to Buyer shall be treated as Confidential Information except that it may be disclosed in connection with the preparation, review, certification and publication of Buyer’s financial statements.

(e) Seller shall notify Buyer at any time during the term of this Agreement of any services provided or proposed to be provided to Seller by Buyer’s independent auditor. Seller, and any of Seller’s Affiliates, are prohibited from engaging Buyer’s independent auditor for any services or in any consulting agreement without the express written consent of partner in charge of Buyer’s independent audit.

21.3 Other Regulatory and Governmental Requirements. At Buyer’s request, Seller shall maintain and deliver to Buyer copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under Sections 21.1 and 21.2, in order to comply with all Applicable Laws.

21.4 Audit Rights. Either Party shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of the other Party to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Each Party shall promptly comply with any reasonable request by the other Party and provide copies of such documents, records or data to the requesting Party. The rights and obligations under this Section 21.4 shall survive the termination of this Agreement for a period of 2 years.

ARTICLE 22 DISPUTES

22.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article 22. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Article 22.

22.2 Management Negotiations.

22.2.1 The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

22.2.2 Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

22.2.3 All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

22.2.4 If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 22.2.1 above, refuses or does not meet within the ten (10) Business Day period specified in Section 22.2.1 above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

22.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 22.2 above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration").

22.3.1 Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in AAA's Commercial Arbitration Rules.

22.3.2 At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

22.3.3 The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

22.3.4 The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

22.3.5 The arbitrator's award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.

22.3.6 Judgment on the award may be entered in any court having jurisdiction.

22.3.7 The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.

22.3.8 The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.

22.3.9 The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.

22.3.10 The existence, content, and results of any Arbitration hereunder is Confidential Information that is subject to the provisions of Section 24.1.

22.4 WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

22.5 Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 23 INDEMNIFICATION

23.1 Indemnities

(a) Indemnity by Seller. Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("Claims") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered by Seller under this Agreement up to the Energy Delivery Point or Charging Energy received by Seller under this Agreement after the Energy Delivery Point, (ii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (iii) the failure by Seller or the failure of the Project to comply with Applicable Laws, including without limitation the Tariff, (iv) a breach of its covenants, representations, or warranties under this Agreement, (v) any Governmental Charges for which Seller is responsible hereunder, or (vi) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

(b) Indemnity by Buyer. Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Energy Delivery Point or Charging Energy delivered by Buyer under this Agreement up to the Energy Delivery Point, (ii) the failure by Buyer to comply with Applicable Laws, including without limitation the Tariff, (iii) a breach of its covenants, representations or warranties under this Agreement, or (iv) any Governmental Charges for which Buyer is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

23.2 Insurance. The provisions of this Article 23 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.

23.3 Survival. All indemnity rights shall survive the termination of this Agreement.

ARTICLE 24 CONFIDENTIALITY/REGULATORY DISCLOSURE

24.1 Confidentiality.

24.1.1 General. Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 24.1.2 of this Agreement; (v) in order to comply with any Applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in clause (vii); (vi) to a Qualified Assignee subject to an appropriate non-disclosure agreement; or (vii) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 24.1.1 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

24.1.2 Specific Terms. Notwithstanding Section 24.1.1 of this Agreement, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Period, Project location, Contract Capacity, Guaranteed Initial Delivery Date and Energy Delivery Point.

24.1.3 Publicity. Except as otherwise agreed to in this Section 24.1 above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.

24.2 Ownership of Information. All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement.

24.3 Enforcement. The Parties agree that irreparable damage would occur if the confidentiality obligations under this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this Article 24 and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

ARTICLE 25 MISCELLANEOUS

25.1 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect its obligations under the Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

25.2 Notices. Unless otherwise provided in this Agreement, any Notice shall be in writing to the address provided below and delivered by hand delivery, United States mail, overnight courier service, facsimile, or electronic messaging (e-mail). Notice by facsimile, electronic messaging (e-mail), or hand delivery shall be effective at the close of business on the day received, if the entire document was received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day after it was sent for “next-day delivery” or its equivalent by a nationally-recognized overnight courier or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after it was sent. Notice by United States mail shall be effective on the day it was received. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 25.2.

To Buyer:
San Diego Gas & Electric Company
8315 Century Park Court, CP21D
San Diego, California 92123
Attention: Director of Procurement and Portfolio Design
Telephone: 858-650-6156
Facsimile: 858-650-6191

To Seller:

Attention: _____

Telephone: _____

Facsimile: _____

25.3 Governing Law; Venue. This Agreement shall be construed under the laws of the State of California without giving effect to choice of law provisions that might apply the laws of a different jurisdiction. The Parties hereby consent to conduct all dispute resolution, judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to or arising from this Agreement in the City of San Diego, California.

25.4 Amendment. This Agreement can only be amended by a writing signed by both Parties.

25.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of at least fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the value of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. . Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and thereby relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Any assignment in violation of this Section 25.5 shall be null and void.

25.6 Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

25.7 Waiver. None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

25.8 Obligations Surviving Termination. 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, without limitation, representations, warranties, covenants and rights and

obligations with respect to audits, indemnification, payment and settlement, confidentiality, shall so survive.

25.9 No Third Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

25.10 Entire Agreement. Except for the Security Documents, the electric retail service agreement (if any) and electrical interconnection agreements between the Parties, [insert any others] this Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement that is not set forth in this Agreement.

25.11 Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement. In the event any such provision of this Agreement is so held invalid, illegal or void, the Parties shall promptly renegotiate in good faith new provisions to restore this Agreement as near as possible to its original intent and effect.

25.12 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

25.13 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. dist.*, No. 1 of Snohomish 554 US 527 (2008).

25.14 Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties hereto or to impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

25.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures

thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

25.16 Interpretation. The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends. Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies. Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Appendix A, unless otherwise specified. Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement. Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions. All references to dollars are to U.S. dollars.

(Signature page follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

[INSERT SELLER NAME]

By: _____
Name: _____
Title: _____

SAN DIEGO GAS & ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

APPENDIX A DEFINITIONS

“AAA” means the American Arbitration Association.

“Accepted Electrical Practices” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of other, but rather to those practices, methods and act generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

“ADS” means CAISO’s Automatic Dispatching System.

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50 percent) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreement” means this Energy Storage Power Purchase Agreement between Buyer and Seller, and any and all amendments as may be executed between Buyer and Seller from time to time.

“Ancillary Services” means spinning, non-spinning, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Project is capable of providing from time to time during the Delivery Period, consistent with the Operating Restrictions set forth in Appendix 1.1, as each is defined in the Tariff. **[NOTE to Bidders: please tailor to reflect ancillary services bid.]**

“Ancillary Services Capacity” or “A/S Capacity” means Capacity associated with Ancillary Services available to Buyer within the scope of operations allowed Buyer under Section 1.1.3 of this Agreement.

“Applicable Laws” means all applicable statutes, laws, court decisions, ordinances, rules, order, writ, subpoena or regulations of any Governmental Authority, or the rules or regulations of any exchange or control grid operator.

“Arbitration” has the meaning set forth in Section 22.3.

“Associated Ancillary Services Energy” means the Energy expressed in megawatt-hours (“MWh”) expressly associated with the Ancillary Services Capacity made available from the Energy Storage System at the instruction of the CAISO.

“Associated Energy” means the Energy expressed in megawatt-hours (“MWh”) or kilowatt-hours (“KWh”), expressly associated with Capacity dispatched under this Agreement.

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Availability Notice” means an hourly schedule of the amounts of Available Capacity that the Energy Storage System is expected to be available during each hour of the day to which the Availability Notice pertains, pursuant to Section 15.1.

“Availability Standards” shall mean Availability Standards as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Available Capacity” means the amount of Charging Capacity and Discharging Capacity that is available to Buyer under this Agreement from the Project on average during an hour.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the United States Thanksgiving holiday, or a Federal Reserve Bank holiday.

“Buyer Cost Test” has the meaning set forth in Section 7.1.

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all Participating Transmission Owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions.

“CAISO Charges Invoice” has the meaning set forth in Section 14.4.

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, et seq).

“Capacity” means both the Charging Capacity and the Discharging Capacity of the Project.

“Charging Capacity” means the maximum dependable operating capability of the Project, measured in MW_{AC}, to charge electric energy into a partially or fully discharged storage device from the CAISO Grid.

“Charging Energy” means, in respect of the Energy Storage System, for a given period of time, the amount of Energy (in kWh_{AC}) used to charge (or recharge) the Energy Storage System from the CAISO Grid during the period at the Energy Delivery Point as measured by the Energy Metering Equipment.

“Charging Energy Capacity” means the maximum amount of energy, in MWh_{DC}, that the Energy Storage System is capable of being charged.

“Claiming Party” means the Party claiming a Force Majeure under Article 18.

“Claims” has the meaning set forth in Section 23.1.

“Collateral Assignment Agreement” has the meaning set forth in Section 12.1.

“Commercial Operation” means that (a) the construction and installation of the Project has been completed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices, and (b) the Project shall have successfully passed all Commercial Operation Tests at a level that demonstrates Contract Capacity of at least the Expected Contract Capacity and a Tested Round-Trip Efficiency Rate of at least the Guaranteed Round-Trip Efficiency Rate, and complete test reports have been submitted to Buyer, as set forth in a written Notice from Seller to Buyer specifying the date on which the requirements described in clauses (a) and (b) were satisfied, as confirmed in each case by Buyer and/or Buyer’s engineer; provided, however, that such confirmation must be made within twenty-one (21) days after receipt of complete test reports from Seller required pursuant to clause (b) and, if not made within such twenty-one (21) day period shall be deemed to have been given unless Buyer or Buyer’s engineer shall have provided the reasons for why such requirements have not been satisfied within such twenty-one (21) day period; provided, further, that upon such confirmation, Commercial Operation shall be deemed to have been achieved as of the date set forth in such Notice from Seller to Buyer that the requirements described in clauses (a) and (b) were satisfied.

“Commercial Operation Test” has the meaning set forth in Section 7.2.

“Conditions Precedent” has the meaning set forth in Section 2.4.

“Confidential Information” means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives in violation of this Agreement, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, provided that, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.

“Construction Period Security” has the meaning set forth in Section 11.2.2.

1.1.1. “Contract Capacity” means the Capacity of the Project determined pursuant to Section

“Contract Capacity Tests” has the meaning as set forth in Section 7.3 and further described in Appendix 7.

“Contract Conditions” means the following ambient (outdoor) temperature ranges: (a) for operation of the Energy Storage System, between []°C and []°C during charging, and between []°C and []°C during a discharging, and (b) during the storage of Energy, between []°C and []°C..

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. Contract Year #2 would be from January 1st through December 31st of the calendar year immediately following the initial Contract Year. The final Contract Year will be January 1st through the last day of the Delivery Period.

“Costs” means with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations under the Agreement or entering into new arrangements which replace the Product, including any costs or penalties imposed upon the Non-Defaulting Party for the loss of Resource Adequacy Benefits or for replacing those Resource Adequacy Benefits.

“CP Satisfaction Date” means the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the applicable Party(ies) described in Section 2.5.1).

“CPUC” means the California Public Utilities Commission or any successor thereto.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer and all other relief as may be requested by Buyer in its submittal to the CPUC for approval, subject to CPUC review of the Buyer’s administration of the Agreement.

“Credit Rating” means, with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s. If a party has outstanding multiple debt or deposit obligations meeting such criteria and differing ratings have been assigned by a single rating agency to such multiple obligations, the lowest of such ratings shall apply. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by either S&P or Moody’s, then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody’s, as the case may be.

“Cure Period” has the meaning set forth in Section 2.10.1.

“Daily Delay Damages” means liquidated damages paid by Seller to Buyer in the amount of \$[XX,XXX] per day for each day of delay.

“Day-Ahead” has the meaning set forth in the Tariff.

“Day-Ahead Market” has the meaning set forth in the Tariff.

“Day-Ahead Schedule” has the meaning set forth in the Tariff.

“Default Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2 percent), and (b) the maximum rate permitted by Applicable Law. The Federal Reserve H.15 Statistical Release, Selected Interest Rates (daily) may be found at the following address: www.federalreserve.gov/releases/H15/update.

“Defaulting Party” has the meaning set forth in Section 3.1.

“Delivered Energy” means, in respect of the Project, for a given period of time, the amount of Energy delivered by the Project for Buyer’s account during the period at the Energy Delivery Point for the Project as measured by the Energy Metering Equipment, expressed in kWh_{AC}.

“Delivery Excuse” means (i) any Event of Default of Buyer under this Agreement; (ii) the delay or failure by Buyer in performing a material obligation under this Agreement; (iii) the delay or failure of Buyer to deliver Charging Energy or to accept Product as required under this Agreement for whatever reason which failure does not arise in each case as a result of Seller’s non-performance under this Agreement; (iv) the delay or failure by the Participating Transmission Owner in performing a material obligation under any interconnection agreement to which it is a party with Seller, provided Seller assigns to Buyer any claim it may have against the Participating Transmission Owner related to such delay or failure; (v) the delay or failure by the electricity retail service provider in performing a material obligation under any interconnection agreement to which it is a party with Seller, provided Seller assigns to Buyer any claim it may have against the Participating Transmission Owner related to such delay or failure; (vi) any curtailment ordered directly or indirectly from the CAISO (but not including any reduction of deliverable capacity of the Project in accordance with Section 40.4.6.1 or 40.4.2 of the Tariff); and (vii) reductions in Capacity that are consistent with Accepted Electrical Practices that are the result of ambient conditions differing from Contract Conditions.

“Delivery Period” has the meaning set forth in Section 2.8.

“Delivery Period Security” has the meaning set forth in Section 11.2.3.

“Discharging Capacity” means the maximum dependable operating capability of the Project, measured in MW_{AC}, to discharge energy from a partially or fully-charged storage device to the CAISO Grid.

“Discharging Energy Capacity” means the maximum amount of energy, in MWh_{DC}, that is capable of being discharged from the Energy Storage System (assuming the Energy Storage System is Fully Charged).

“Dispatch Notice” means the operating instruction, and any subsequent updates (an “Updated Dispatch Notice”), given by Buyer to Seller, directing the Project to either receive Charging Energy or deliver Delivered Energy at a specified megawatt output at the Energy Delivery Point, in accordance with the procedures set forth in Section 15.3.

“Early Termination Date” has the meaning set forth in Section 3.3.

“Effective Date” is as set forth in the introductory paragraph of this Agreement.

“Efficiency Rate Test” has the meaning as set forth in Section 7.4 and further described in Appendix 7.

“Electric Retail Delivery Point” has the meaning set forth in Section 1.3.2.

“Energy” means all electrical energy used to charge the Energy Storage System, that is stored in the Energy Storage System, or that is delivered by the Energy Storage System, measured in kilowatt-hours or multiple units thereof. Energy shall include without limitation, Unit Contingent Energy, Associated Energy, Associated Ancillary Services Energy, Supplemental Energy, reactive power, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” means the point specified in Section 1.3.1.

“Energy Metering Equipment” means, for the Energy Storage System, the meters and measuring equipment recognized by the CAISO at the Energy Delivery Point for such Energy Storage System, and which measures the Charging Energy received at, and the Delivered Energy delivered to, the Energy Delivery Point.

“Energy Storage System” means the energy storage system and related electrical, control and monitoring facilities specified in Recital B and more specifically described Section 1.2.2 and Appendix 1.2.2.

“Environmental Costs” means costs incurred in connection with the acquiring and maintaining all environmental permits and licenses for the Project, and the Project’s compliance with all applicable environmental laws, rules and regulations, , including without limitation capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and costs associated with the disposal and clean-up of hazardous substances introduced to the site where the Project is located, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

“EPC Contract” means Seller’s engineering, procurement and construction contract with the EPC Contractor, if any.

“EPC Contractor” means the entities chosen by Seller to perform the engineering, procurement and construction activities for the Project, if any.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Equivalent Availability Factor” has the meaning set forth in Appendix 9.2.

“Executive(s)” has the meaning set forth in Section 22.2.1.

“Expected Contract Capacity” means the expected Capacity of the Project, as measured in megawatts (MW_{AC}) at the location of the Energy Delivery Point, as shown in Appendix 1.1.1.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or

(iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

(b) Force Majeure shall not be based on:

(i) Buyer’s inability economically to use or resell the Product purchased hereunder;

(ii) Seller’s ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain governmental approvals or other approvals of any type for the construction, operation, or maintenance of the Project;

(iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

(v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller's Affiliates, or the Project; or

(vii) any equipment failure except to the extent such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above.

"Forced Outage" has the meaning set forth in the Tariff.

"Fully Charged" means the state at which the Stored Energy of the Energy Storage System is equal to the Charging Energy Capacity.

"GAAP" has the meaning set forth in Section 21.2.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to such Party, if any (exclusive of Costs), resulting from the termination and liquidation of the Agreement, determined in a commercially reasonable manner.

"Generation Management System" or "GMS" means the automated system employed by Buyer's real-time operations to remotely monitor and dispatch the Energy Storage System.

"Generation Operations Center" or "GOC" means the location of Buyer's real time operations personnel.

"Governmental Authority" means any federal, state, local, municipal, or other governmental, executive, administrative, judicial or regulatory entity, and the CAISO or any other transmission authority, having or asserting jurisdiction over a Party, the Project or this Agreement.

"Governmental Charges" has the meaning set forth in Section 13.1.

"Grid Control Center" or "applicable Grid Control Center" means the location of the personnel responsible for operating the transmission grid and/or coordinating same with the CAISO.

"Guaranteed Initial Delivery Date" is the date set forth in Section 2.7 for the Project.

"Guaranteed Round-Trip Efficiency Rate" means the guaranteed Round-Trip Efficiency Rate for the Project as set forth in Appendix 1.1.1.

“Guarantor” the entity identified as provided in Section 11.3.3.

“Guaranty Agreement” means, if a Guarantor has been identified as provided in Section 11.3.3, the guaranty agreement from the Guarantor in a form reasonably acceptable to Buyer.

“Hour-Ahead” has the meaning set forth in the Tariff.

“Hour-Ahead Schedule” has the meaning set forth in the Tariff.

“Industry Standards” has the meaning set forth in Section 8.1.1.

“Initial Negotiation End Date” has the meaning set forth in Section 25.2.1.

“Initial Delivery Date” has the meaning set forth in Section 2.8.

“Interconnection Facilities” means all apparatus installed to interconnect the Project to the Participating Transmission Owner’s or other utility owned or managed electric system or to the CAISO Grid to make available to Buyer the Contract Capacity, Associated Energy, and Resource Adequacy Benefits, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner’s electric system (or other system to which the Participating Transmission Owner’s electric system is connection, including the CAISO Grid) and Buyer’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner’s electric system or on the systems of others to which the Participating Transmission Owner’s electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner’s electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

“Lender” means any bank, financial institution or other entity (or any agent thereof) that provides development, bridge, construction, permanent debt, tax equity or other financing or refinancing for the Project to Seller consistent with Section 19.4.3 (subject to the Subordination Agreement and the Collateral Assignment Agreement).

“Letter of Credit” means an irrevocable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Appendix 11.3 and reasonably acceptable to Buyer.

“Losses” means with respect to either Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination and liquidation of the Agreement, determined in a commercially reasonable manner.

“Manager” has the meaning set forth in Section 22.2.1.

“Maximum Annual Delivered Energy Amount” has the meaning set forth in Appendix 1.1.

“Maximum Energy Capacity” means, any given time, the lesser of the Energy Storage System’s Charging Energy Capacity or Discharging Energy Capacity.

“Maximum Force Majeure Delay” has the meaning set forth in Section 2.10.2.

“Maximum RA Capacity” means the maximum amount of Resource Adequacy capacity available from the Project operating within its Operating Restrictions and specifications as set forth in Appendix 1.1 and Appendix 1.2.2. **[As of the Effective Date, such Maximum RA Capacity is the maximum capacity that the Project can achieve in a four (4)-hour period based on its Contract Capacity.]** If the CAISO changes its methodology for determining the maximum amount of capacity available from a storage resource to provide a Resource Adequacy capacity, a new Maximum RA Capacity shall be determined for the Project based on the new CAISO methodology and the Operating Restrictions and such specifications of the Project.

“Meter Service Agreement” or “MSA” has the meaning set forth in the Tariff.

“Milestone Schedule” means the schedule in the form of Appendix 6.1(a), setting forth Seller’s development, design, procurement, construction, commissioning and testing milestones, as set forth in Section 6.1.

“Minimum Operating Level” means the minimum operating level of the Energy Storage System.

“Monthly Capacity Payment” has the meaning set forth in Section 9.2.

“Monthly Progress Report” means a monthly progress report, sent by Seller to Buyer no later than the tenth day of each month while the Project has not yet met its Initial Delivery Date, and within five (5) days of Buyer’s request, substantially in the form set forth in Appendix 6.1(b) and describing Seller’s compliance with the Milestone Schedule, including projected time to complete any milestones, for the Project, as set forth in Section 6.1.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MW” means mega-watt or mega-watts.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC Holidays” means “Additional Off-peak Days” as defined by NERC on the NERC website at <http://www.nerc.com>.

“Non-Availability Charges” shall mean Non-Availability Charges as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 3.3.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile, or electronic messaging (e-mail) in accordance with this Agreement.

“Operating Restrictions” means limitations on Buyer’s ability to schedule and use Capacity, Ancillary Services, and Energy that are identified in Appendix 1.1 to this Agreement.

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected. As of the Effective Date, the Participating Transmission Owner is [San Diego Gas & Electric Company.] **[NOTE to Bidders: to be modified if project is not connected directly to SDG&E’s service territory.]**

“Performance Assurance” means collateral in the form of cash, Letter of Credit, Guaranty Agreement or other security acceptable to Buyer in its sole discretion required to be provided to Buyer under Section 11.2.

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities (including but not limited to, limitations on any pollutant emissions levels, limitations on operational levels or operational time, and limitations on any specified operating constraint) or any other operational restriction or specification related to compliance with any laws or regulations applicable to the Project.

“Permitted Liens” means liens and encumbrances (a) imposed by the Priority Security Interest and the Subordinated Security Interest (including pursuant to any Security Document) or (b) imposed by any Lender.

“Person” means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“PMAX” means the applicable CAISO-certified maximum operating level (in MW) of the Energy Storage System.

“PMIN” means the applicable CAISO-certified minimum operating level (in MW) of the Energy Storage System.

“Pnode” means the Pricing Node as set forth in the CAISO Tariff.

“Pre-Construction Security” has the meaning set forth in Section 11.2.1.

“Priority Security Interest” has the meaning set forth in Section 11.4.

“Product” means the Capacity, Energy, Ancillary Services, and Resource Adequacy Benefits of the Project and all other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project in accordance with the terms hereof.

“Project” has the meaning set forth in the Recitals.

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreements for the Project.

“Qualified Assignee” has the meaning set forth in Section 25.5.

“Qualified Flexible RA Capacity” means, with respect to any month of the Delivery Period, the number of MWs of Contract Capacity that are eligible, certified (if required), and counted to satisfy flexible capacity requirements established for load-serving entities or other persons by the CPUC, the CAISO, or by any other Governmental Authority having jurisdiction.

“Qualified RA Capacity” means, with respect to any month of the Delivery Period, the number of MWs of Contract Capacity that are eligible, certified (if required), and counted to satisfy Resource Adequacy capacity requirements established for load-serving entities or other persons by the CPUC, the CAISO, or by any other Governmental Authority having jurisdiction.

“Ramp Rate” means the ability of the Project to change between power output levels, expressed in MW_{AC}/min.

“Reference Market-Maker” means a leading dealer in the relevant market that is not an Affiliate of either Party and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

“Referral Date” has the meaning set forth in Section 22.2.1.

“Reliability Must-Run Contract” or “RMR Contract” means a Must-Run Service Agreement between the owner of an RMR Unit (or the output therefrom) and the CAISO.

“Representatives” means the officers, directors, members, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents or representatives of a Party or of its Affiliates and in the case of Buyer, includes any Independent Evaluator (as such term is used in CPUC Decision 04-12-048) used by Buyer in connection with the Request for Offers from which this Agreement arose.

“Required Permits” has the meaning set forth in Section 5.1(b).

“Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations (including without limitation those

related to flexible resource adequacy), as those obligations are set forth in any Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions D.04-10-035, D.05-10-042 and D.06-06-0064 and CPUC Resource Adequacy Rulemakings (R.)04-04-003 and (R.)05-12-013 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority (including without limitation those related to flexible resource adequacy), as such Decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

“Retail Electricity Provider” means the provider of retail electricity to the Project at the Electric Retail Delivery Point. On the Effective Date, the Retail Electricity Provider is [San Diego Gas & Electric Company]. **[NOTE to Bidders: to be modified if project receives retail electricity from another provider.]**

“Round-Trip Efficiency Rate” means the efficiency of the Project in recovering Charging Energy from the Energy Storage System, as measured at the Energy Delivery Point (i.e. AC-to-AC efficiency), and expressed as a percentage, rounded to two decimal places (e.g. 85.45%).

“Round-Trip Efficiency Rate Factor” has the meaning set forth in Appendix 9.2.

“Round-Trip Efficiency Rate Minimum Threshold” has the meaning set forth in Appendix 1.1.1.

“S&P” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Scheduled Energy” means the Energy from the CAISO Grid expected to be delivered to the Energy Delivery Point for charging the Energy Storage System, or Energy discharged from the Energy Storage System expected to be delivered to the Energy Delivery Point, in each case pursuant to (a) the latest Dispatch Notice, or (b) any CAISO instructions, including without limitation pursuant to (i) Supplemental Energy bids, (ii) a Reliability Must-Run Contract (as defined in the Tariff) between the CAISO and the Seller, (iii) any Waiver Denial Periods, or (iv) Ancillary Services exercised.

“Scheduled Outage” means a period during which the Energy Storage System is either in whole or in part not capable of charging, storing Energy or discharging Energy due to planned maintenance or repair that has been scheduled in advance in accordance with Section 17.1.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article 14.

“SEC” means the Securities and Exchange Commission.

“Security Documents” means those agreements, documents, instruments, or certifications in a form reasonably acceptable to Buyer that grant and perfect Buyer’s Priority Security Interest and/or Subordinated Security Interest.

“Seller’s Debt” means, without duplication, each of the following: (i) all indebtedness of Seller for borrowed money; (ii) all obligations of Seller for the deferred purchase price of property or service, which purchase price is due more than six (6) months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller’s business); (iii) all obligations of Seller evidenced by notes, bonds, debentures, disqualified stock or other similar instruments; (iv) all obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (v) all monetary obligations of Seller under (a) a lease of any property (whether real, personal, or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller, (b) a so-called synthetic, off-balance sheet or tax retention lease, or (c) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regard to accounting treatment); (vi) all obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities; (vii) all obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock, at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (viii) all Swap Obligations of Seller; (ix) all indebtedness of others referred to in clauses (i) through (viii) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement (a) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness, (b) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss; (c) to supply funds to or invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), or (d) otherwise to assure a creditor against loss; and (x) without duplication of the foregoing, all indebtedness referred to in clauses (i) through (ix) above secured by any lien on property (including amounts and contract rights) owned by Seller. The outstanding amount of indebtedness as described above at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation. Notwithstanding the foregoing, the term “Seller’s Debt” as used herein shall not include Seller’s obligations under this Agreement or the lease of the Site (provided, such Site lease does not constitute an obligation of Seller described in clause (v) of the first sentence of this definition).

“Seller Cost Test” has the meaning set forth in Section 7.1.

“Seller Initiated Test” has the meaning set forth in Section 7.5.

“Settlement Amount” means, with respect to the Non-Defaulting Party, the amount of Losses and Costs, net of Gains, expressed in U.S. Dollars, incurred by the Non-Defaulting Party as a result of the liquidation of the Agreement pursuant to Section 3.4.

“Site Control” means that Seller owns the Site and the Project or has demonstrable contractual rights to, or is the managing general partner of any partnership (or comparable manager of any other person) who owns or has demonstrable contractual rights to, with explicit authority

to act in all matters relating to, the control and operation of, the Site and the Project in order to perform its obligations under this Agreement.

“State of Energy” means the amount of Stored Energy in the Energy Storage System in real time, expressed as a percent of Maximum Energy Capacity (e.g., 95% SOE).

“Station Use” means Stored Energy that is used to operate the Project’s auxiliary equipment. The auxiliary equipment includes, but is not limited, to air conditioning or other cooling units, forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, control systems and sump pumps.

“Stored Energy” means the amount of Energy stored in the Energy Storage System at any given time, in kWh_{DC}, as indicated by Seller’s Stored Energy Measuring Device.

“Stored Energy Measuring Device” means, for the Energy Storage System, the measuring equipment for the Energy Storage System which provides the Stored Energy amount, Maximum Energy Capacity and State of Energy of the Energy Storage System in real-time, as specified in Appendix 1.2.2.

“Subordinated Security Interest” has the meaning set forth in Section 11.5.1.

“Subordination Agreement” has the meaning set forth in Section 11.5.1.

“Supplemental Energy” is the Energy from the Project which has uncommitted capacity following finalization of the Hour-Ahead Schedules and which Energy shall be available to CAISO during the Real Time Market.

“Swap Obligations” means obligations in respect of any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value.

“System Response Time” means the amount of time for the Project to change from an off-line state to the maximum discharge rate for the Project and the amount of time for the Project to change from an off-line state to discharging at the maximum discharge rate.

“Tariff” means the tariff and protocol provisions, as amended or supplemented from time to time, of the CAISO.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 3.4.

“Tested Round-Trip Efficiency Rate” means the Round-Trip Efficiency Rate of the Project determined as of the Initial Delivery Date by the Commercial Operation Test as set forth in Section 7.2 and Appendix 7 and thereafter pursuant to the Efficiency Rate Tests as set forth in Section 7.4 and Appendix 7.

“Transmission Owners Tariff” means the tariff setting out a Participating Transmission Owner’s rates and charges for transmission access to the CAISO Grid, filed with the CPUC, as it

may be amended or superseded and accepted by the CPUC from time to time, or any successor tariff.

“Uninstructed Deviation Penalty” has the meaning set forth in the Tariff.

“Uninstructed Imbalance Energy” has the meaning set forth in the Tariff.

“Unit Contingent Energy” means Energy delivered by the Energy Storage System that is dependent upon the availability and operation of that Energy Storage System.

“Unscheduled Outage” means a period during which the Energy Storage System is not capable of providing service due to the need to maintain or repair a component thereof, which period has not been scheduled in advance in accordance with Section 20.1.

“Variable O&M Charge” means a variable operations and maintenance charge calculated in accordance with Appendix 9.3.

“Waiver Denial Periods” has the meaning set forth in the Tariff.

“WECC” means the Western Electricity Coordinating Council, or any successor thereto.

APPENDIX 1.1
OPERATING RESTRICTIONS

Maximum Annual Delivered Energy Amount.

Buyer shall not dispatch the Project to discharge in excess of [] kWh_{AC} in Delivered Energy per calendar year of the Delivery Period (which amount shall be prorated for partial calendar years) (the “Maximum Annual Delivered Energy Amount”); provided that the Parties acknowledge that CAISO may dispatch the Project even after such Maximum Annual Delivered Energy amount has been reached.

APPENDIX 1.1.1
CONTRACT CAPACITY

Expected Contract Capacity: _____ MW_{AC}

Guaranteed Round-Trip Efficiency Rate = _____ .00%

The Round-Trip Efficiency Rate Minimum Threshold for a Contract Year shall be the Guaranteed Round-Trip Efficiency Rate for such Contract Year minus [_____] %.

APPENDIX 1.2.2 PROJECT DESCRIPTION

Project Physical Address: _____

Project Latitude and Longitude: _____

Project Site: See map below

Technology Type: _____

Description of Energy Storage System: [Description of building block and components, battery management system, e.g.]

Description of Stored Energy Measuring Device: [Description of how the Stored Energy amount will be measured, including which methodology (e.g. voltage or other) used to calculate Stored Energy]

Description of Generation Tie-Lines/Interconnection Facilities: _____

Shared Facilities: _____

Ramp Rate Guarantee: > ____ MW/min

System Response Time Guarantee: < ____ seconds

Map:

APPENDIX 1.3.1
ENERGY DELIVERY POINT

Single-line diagram depicting Energy Delivery Point

APPENDIX 1.3.2
ELECTRIC RETAIL DELIVERY POINT

To be inserted by the Parties pursuant to Section 1.3.2, if applicable.

APPENDIX 6.1(a)
MILESTONE SCHEDULE

Milestone	Milestone Date
File application(s) for Required Permit(s)	
Receipt of Required Permit(s)	
Execution of [Large/Small] Generator Interconnection Agreement	
Site readiness for construction (including receipt of all zoning approvals, easements, rights of way, utility access)	
Commencement of Construction Activities	
Synchronization of the Energy Storage System to CAISO Grid	
Submittal of all operational documentation including successful acceptance testing and approved test report	
Completion of system commissioning and pre-operational testing	
Achievement of Initial Delivery Date	

APPENDIX 6.1(b)
MONTHLY PROGRESS REPORT

Monthly Progress Report
of
[INSERT SELLER'S NAME]
provided to
San Diego Gas & Electric Company
[Date]

Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Energy Storage Power Purchase Agreement by and between [insert Seller's name] (Seller) and San Diego Gas & Electric Company (Buyer) dated [_____, 200_] (the "Agreement").

Seller shall review the status of each significant element of the Milestone Schedule and Seller shall identify such matters referenced in clauses (i)-(iii) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Project or the Milestone Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that conditions precedent and the milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Permit Requirement, or compliance therewith, with respect to which there is a dispute over the interpretation of a law or regulation, any organized public opposition to the granting of a necessary Permit Requirement, or any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, in each case which in Seller's reasonable opinion could reasonably be expected to materially threaten or prevent achieving Commercial Operation of the Energy Storage System by the Initial Delivery Date;

(ii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to achieve Commercial Operation of the Energy Storage System by the Initial Delivery Date;

(iii) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form Monthly Progress Report to Buyer, together with all attachments and exhibits.

Major activities to be performed for each aspect of the Project during the current calendar month.

Please provide a brief summary of the Major¹ activities to be performed for each of the following aspects of the Project during the current calendar month:

¹ For Purposes of this Report, "Major" shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller's inability to achieve a Milestone Date.

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Major activities scheduled to be performed in the previous calendar month but not completed as scheduled.

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar month and their status, including those activities that were not completed as scheduled:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Overall assessment of the Project status.

Please provide a brief summary of your assessment of the status and progress of each of the following aspects of the Project:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Exhibit 1: Progress Curve.

The progress curve which shows the progress achieved on the construction of the Project through the current month against the current Monthly Progress Report is included herewith as Exhibit 1.

Exhibit 2: Photos.

The photos included with this Exhibit 2 indicate construction progress to-date at the Project site.

Safety and Health Reports

Any work stoppage from the previous calendar month:

Work stoppage impact on construction of the Project:

I, _____, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in the attached _____'s Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX 7 TESTING PROTOCOLS

COMMERCIAL OPERATION, CONTRACT CAPACITY TESTS, and EFFICIENCY RATE TESTS

This Appendix 7 sets forth the protocols for (i) the Commercial Operation Test that the Project must successfully complete in order to achieve Commercial Operation and which sets the level of Contract Capacity and Tested Round-Trip Efficiency Rate for the Project at the start of the Delivery Period, (ii) the Contract Capacity Test, and (iii) the Efficiency Rate Test. The Commercial Operation Test, the Contract Capacity Test and the Efficiency Rate Tests are sometimes referred to in this Appendix individually as a “Test” and together as the “Tests”.

PART I. GENERAL.

- A. Test Performance. Each Test will be conducted consistent with Accepted Electrical Practices, Contract Conditions, Applicable Law, manufacturer recommendations, and the provisions of published test procedures developed by the Electric Power Research Institute (EPRI) Energy Storage Integration Council (ESIC) (or equivalent test procedures accepted as an Industry Standard for lithium ion battery energy storage systems) . At all times during a Test, the Project shall not be operated with abnormal operating conditions such as unstable load conditions. If conditions occur during a Test that are contrary to any of the foregoing, Buyer may postpone or reschedule all or part of such Test in its reasonable discretion, in which case such Test shall be deemed an Incomplete Test.
- B. Final Test Plan. All Tests shall be conducted in accordance with the Final Test Plan for such Test, provided that such Final Test Plan is consistent with the requirements of Part I.A above.
- C. Test Records. Seller shall provide all records associated with a Test (including the conditions, inputs, assumptions, data and results) no later than four (4) Business Days following completion of a Test.
- D. Incomplete Test. If any Test is not completed in accordance herewith, such Test shall be deemed an “Incomplete Test”, and Buyer may in its sole discretion: (i) accept the Test results up to the time the Test stopped (other than in the case such Test is the Commercial Operation Test); (ii) require that the portion of the Test not completed, be completed within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Unless the reason a Test is an Incomplete Test, any repeat or re-starting of a Test that is a Buyer Cost Test shall cause such Test to be a Seller Cost Test instead.
- E. Final Report. Within fifteen (15) Business Days after the completion of a Test (including a retest of a Test), Seller shall prepare and submit to Buyer a written report of the Test (or retest). At a minimum, the report shall include:

- (1) a description of the Final Test Plan for the Test;
- (2) a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;
- (3) a record of Test conditions and assumptions, including any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
- (4) the measured applicable Test data; and
- (5) Seller's statement of either Seller's acceptance of the Test or Seller's rejection of the Test results and reason(s) therefore.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the Test results or Buyer's rejection of the Test and reason(s) therefore. If Buyer reasonably rejects the results of any Test, such Test shall be repeated (and if such Test is a Buyer Cost Test, then such retest shall be a Seller Cost Test).

- F. Buyer Representative. Buyer shall be entitled to have its representatives and any independent third party witness present to witness each Test and shall be allowed unrestricted access to the area from where the Project is being controlled (e.g., Project control room), and unrestricted access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to the representative and the third party, if any.

PART II. COMMERCIAL OPERATION TEST.

- A. Test Elements. The Commercial Operation Test required pursuant to Section 7.2 shall consist of the following tests:
1. Contract Capacity Test;
 2. Efficiency Rate Test; and
 3. Other tests required to confirm compliance with the Project's specifications in Appendix 1.2.2 ("Initial Compliance Tests").
- B. Test Plan. No less than sixty (60) days prior to the Initial Delivery Date, Seller shall prepare and submit to Buyer a proposed procedure and schedule in order to complete the Commercial Operation Test ("Seller's Proposed Test Plan"). Such Seller's Proposed Test Plan must describe, with supporting detail, the actions, processes, protocols, and schedules to comply with all of the requirements of each individual test as set forth in this Appendix. Within ten (10) Business Days after Buyer's receipt of Seller's Proposed Test Plan, Buyer shall notify Seller that (i) the Seller's Proposed Test Plan is accepted, and is now considered the Final Test

Plan, or (ii) the Seller's Proposed Test Plan is not accepted. If Buyer does not accept Seller's Proposed Test Plan, then Buyer and Seller shall immediately commence work in good faith to finalize such Test procedures and schedules ("Final Test Plan"). If, after thirty (30) days from Buyer's receipt of Seller's Proposed Test Plan, Seller and Buyer have not agreed on a Final Test Plan, Buyer shall provide Seller with the Final Test Plan within seven (7) Business Days after the expiration of the thirty (30) day period. Failure by Buyer to provide Seller with written acceptance of any Seller's Proposed Test Plan shall not constitute acceptance of such Seller's Proposed Test Plan.

- C. Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the Commercial Operation Test. Instrumentation shall include all instruments permanently installed at the Project and the temporary instruments suggested by Seller or deemed necessary by Buyer in its sole judgement. Within thirty (30) days of Buyer's receipt of Seller's Proposed Test Plan, Buyer shall provide Seller with written notice of the temporary calibrated instrumentation deemed necessary by Buyer that will be used during the Commercial Operation Test. Wherever possible, the instrumentation, metering and data collection equipment that will be used after the Project achieves the Initial Delivery Date for monitoring and controlling the operation of the Project shall be used for the Commercial Operation Test. Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the Commercial Operation Test. All electrical metering equipment shall utilize the Project's installed CAISO metering equipment calibrated to CAISO standards. Copies of all calibration sheets shall be provided to Buyer at least five (5) Business Days prior to the Commercial Operation Test.

PART III. INITIAL COMPLIANCE TEST.

- A. Test Plan. The Final Test Plan from the Commercial Operation Test for the Initial Compliance Test shall be used for the Initial Compliance Test, unless the Parties agree otherwise in writing.
- B. Test Elements. The Initial Compliance Tests shall include the following test elements (unless Buyer otherwise agrees in writing in its sole discretion):
1. Measurement of Ramp Rates at six (6) different starting and ending points; and
 2. Measurement of System Response Times from an off-line state to the maximum charging rate of the Project and from an off-line state to the maximum discharging rate of the Project.
- C. Test Showing. For satisfactory completion of the Initial Compliance Tests, Seller must demonstrate to Buyer's reasonable satisfaction, that the Project has met the guaranteed Ramp Rate and System Response Times set forth in Appendix 1.2.2.

PART IV. CONTRACT CAPACITY TEST

- A. Test Plan. The Final Test Plan from the Commercial Operation Test for the Contract Capacity Test shall be used for the Contract Capacity Test, unless the Parties agree otherwise in writing.
- B. Test Measurements. The Contract Capacity Tests shall include the following test measurements (unless Buyer otherwise agrees in writing in its sole discretion):
 - 1. Measurement of the Project's maximum Charging Capacity over four (4) continuous hours of charging from 0% State of Energy to 100% State of Energy.
 - 2. Measurement of the Project's maximum Discharging Capacity over four (4) continuous hours of discharging from 100% State of Energy 0% State of Energy.
- C. Capacity Calculation. The Contract Capacity of the Project shall be the lesser of the Project's Charging Capacity or Discharging Capacity measured pursuant to Part IV.B. above.

PART V. EFFICIENCY RATE TESTS

- A. Test Plan. The Final Test Plan from the Commercial Operation Test shall be used for the Efficiency Rate Test, unless the Parties agree otherwise in writing.
- B. Test Elements. The Efficiency Rate Tests shall be conducted as follows (unless Buyer otherwise agrees in writing in its sole discretion):
 - 1. At the start of the Efficiency Rate Test, the Stored Energy of the Energy Storage System shall be reduced to an amount equal or less than [20%] State of Energy, which Stored Energy amount ("Stored Energy_{test,0}") shall be recorded.
 - 2. The Project shall be charged with Charging Energy to bring the Stored Energy of the Energy Storage System to at least [80%] State of Energy, at the then-applicable Contract Capacity, which Charging Energy amount ("Charging Energy_{test}") and Stored Energy amount at the end of such charging ("Stored Energy_{test,1}") shall be recorded.
 - 3. Following the expiration of up to 24 hours after the end of such charging, the Scheduling Coordinator for the Project shall schedule the Project for discharging, at the Contract Capacity in an amount equal to the product of Charging Energy_{test} multiplied by the Guaranteed Round-Trip Efficiency Rate. The Delivered Amount at the end of such discharging ("Delivered Energy_{test}") and the Stored Energy amount at the end of such discharging ("Stored Energy_{test,2}") shall be recorded.

4. The Tested Round-Trip Efficiency Rate (TRTER) shall be calculated as follows:

$$\text{TRTER} = \left(\frac{\text{Stored Energy}_{test,1} - \text{Stored Energy}_{test,0}}{\text{Charging Energy}_{test}} \right) \times \left(\frac{\text{Delivered Energy}_{test}}{\text{Stored Energy}_{test,1} - \text{Stored Energy}_{test,2}} \right) \times 100\%$$

APPENDIX 9.2 MONTHLY CAPACITY PAYMENT

The Monthly Capacity Payment for each month of the Delivery Period shall be determined as follows:

$$MCP_m = CC_m \times CR \times SF_m \times EAF_m \times RTERF_m$$

Where:

MCP_m is the Monthly Capacity Payment expressed in Dollars for month m of the Delivery Period. If month m is less than a full calendar month, then the Monthly Capacity Payment for such month shall be prorated based on the number of days of the Delivery Period during such month.

CC_m is the Contract Capacity in effect during month m , expressed in kW_{AC}, rounded to the nearest 100 kW_{AC}. If the Contract Capacity changes during such month, then the Monthly Capacity Payment for such month shall be prorated based on the applicable Contract Capacity before such change and the applicable Contract Capacity from and after such change.

CR is the Capacity Rate expressed in Dollars per kW_{AC}-year,

$$CR = \$[XXX]/\text{kW}_{AC}\text{-year}$$

SF_m is the Monthly Shaping Factor for the applicable month m , as set forth in the following table:

Month	Monthly Shaping Factor (%)
January	6.7
February	5.0
March	5.0
April	5.8
May	6.3
June	8.3
July	15.8
August	17.5
September	11.7
October	5.8
November	5.8
December	6.3

Notwithstanding the foregoing, Buyer may modify the Monthly Shaping Factors by providing Notice to Seller of its modifications no later than ninety (90) days prior to the start of the next Contract Year; provided, however, the sum of the twelve (12) Monthly Shaping Factors in any Contract Year must equal one

hundred percent (100%); provided further Buyer's right to modify the Monthly Shaping Factor shall not apply to the final Contract Year.

EAF_m or the "Equivalent Availability Factor" for month m is the equivalent availability factor computed as follows:

$$EAF_m = \sum_i^p \frac{Availability_i}{p}$$

Where:

p is the number of hours in month m .

i is the hour in month m .

$Availability_i$ is the lesser of the following, for hour i :

- (a) the quotient of (i) the sum of (A) the lesser of the Charging Capacity (unless the Energy Storage System is Fully Charged during such hour) or Discharging Capacity (unless the Energy Storage System is fully discharged during such hour) of the Project applicable for such hour, plus (B) the amount that such lesser amount determined in clause (A) is unavailable as a result of Delivery Excuse, divided by (ii) the Contract Capacity applicable for such hour; or
- (b) if the Project has been assigned a Qualified RA Capacity or Qualified Flexible RA Capacity, the quotient of (i) the sum of (A) the lesser of the Qualified RA Capacity (if available) or the Qualified Flexible RA Capacity (if available) of the Energy Storage System applicable for such Settlement Interval, plus (B) the amount that such lesser amount determined in clause (A) is unavailable as a result of Delivery Excuse, divided by (ii) the Maximum RA Capacity associated with the Contract Capacity for the month;

provided, however, that (a) if either the Charging Capacity or Discharging Capacity used in clause (a)(i)(A) above used for hour i exceeds the Contract Capacity applicable for such hour, then such Charging Capacity or Discharging Capacity, as applicable, shall equal the Contract Capacity for such hour, and (b) Availability shall in no event exceed 1.00 for any hour under clauses (a) or (b), above.

$RTERF_m$ or the "Round-Trip Efficiency Rate Factor" for month m shall be computed as follows:

- (a) If the Tested Round-Trip Efficiency Rate in effect during month m is less than [____].00%, then:

$$RTERF_m = \frac{\text{Tested Round-Trip Efficiency Rate}_m}{\text{Guaranteed Round-Trip Efficiency Rate}}$$

Where:

Tested Round-Trip Efficiency Rate_m is the Tested Round-Trip Efficiency Rate for the Project in effect during month m ;

Provided that if the Round-Trip Efficiency Rate Factor for month m exceeds 1.00 under this clause (a), then the Round-Trip Efficiency Rate Factor for month m shall be deemed to be 1.00 for purposes of this clause (a).

- (b) If the Tested Round-Trip Efficiency Rate in effect during month m is equal or greater than [____].00%, then:

$$RTERF_m = \text{Tested Round-Trip Efficiency Rate}_m \text{ divided by } 0.[\text{____}];$$

Provided that if the Round-Trip Efficiency Rate Factor for month m exceeds 1.[____] under this clause (b), then the Round-Trip Efficiency Rate Factor for month m shall be deemed to be 1.[____] for purposes of this clause (b).

- (c) If the Round-Trip Efficiency Rate for the Project changes during such month, then the Monthly Capacity Payment for such month shall be prorated based on the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) before such change and the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) from and after such change.

APPENDIX 9.3
VARIABLE O&M CHARGE

The Variable O&M Charge for each month of the Delivery Period pursuant to a Dispatch Notice shall be calculated as follows:

$$\text{VOMP} = \text{RATE} \times \text{Delivered Energy (in kWh}_{\text{AC}}) \div 1,000$$

Where:

$$\text{RATE} = \$[\text{XX}]/\text{MWh}_{\text{AC}}$$

APPENDIX 11.3
LETTER OF CREDIT FORM

IRREVOCABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in San Diego, California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation in compliance on or prior to 5:00 p.m. California time, on or prior to the Expiration Date, of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank. The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored except as described in the succeeding paragraph.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

By: _____
Title: _____

ATTACHMENT A TO APPENDIX 11.3
DRAWING CERTIFICATE
TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit

Reference Number: _____

The undersigned _____, an authorized representative of San Diego Gas & Electric Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Standby Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 - ☐ A. An Event of Default, as defined in the Energy Storage Power Purchase Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 - ☐ B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - ☐ C. Applicant has forfeited all or part of its Pre-Construction Security as set forth and defined in the Agreement.
 - ☐ D. Applicant has incurred Daily Delay Damages as set forth and defined in the Agreement.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein

shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: SAN DIEGO GAS & ELECTRIC COMPANY

By:
Name:
Title:

APPENDIX 15.1
AVAILABILITY NOTICE

Availability Notice

Trading Day: _____

Station: _____ Issued By: _____

Unit: _____ Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Charging Capacity	Available Discharging Capacity	Minimum Output	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

Comments: _____

APPENDIX 15.3
DISPATCH AND UPDATED DISPATCH NOTICES

Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Hour Ending	Scheduled Energy for Charging	Scheduled Energy for Discharging	Spinning Reserve	Non-Spinning Reserve	Comments
	(MW)	(MW)	(MW)	(MW)	
1:00					
2:00					
3:00					
4:00					
5:00					
6:00					
7:00					
8:00					
9:00					
10:00					
11:00					
12:00					
13:00					
14:00					
15:00					
16:00					
17:00					
18:00					
19:00					
20:00					
21:00					
22:00					
23:00					
0:00					

Comments: _____

Updated Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Changes from Scheduled Delivery are highlighted.

Comments: _____

Hour Ending	Scheduled Energy for Charging	Scheduled Energy for Discharging	Spinning Reserve	Non-Spinning Reserves	Comments
	(MW)	(MW)	(MW)	(MW)	
1:00					
2:00					
3:00					
4:00					
5:00					
6:00					
7:00					
8:00					
9:00					
10:00					
11:00					
12:00					
13:00					
14:00					
15:00					
16:00					
17:00					
18:00					
19:00					
20:00					
21:00					
22:00					
23:00					
0:00					

APPENDIX 15.6

DAILY OPERATING REPORT

Buyer shall create a template for use as a Daily Operating Report which contains all the information required by Buyer regarding the Project's daily operations (including the Project's hourly Availability, Capacity, Charging Energy, Delivered Energy, Stored Energy, Maximum Energy Capacity and State of Energy), with Seller's approval (which approval shall not be unreasonably withheld). Until such template is created and approved by the Parties as provided above, Seller shall not be required to provide such Daily Operating Report as set forth in Section 15.6 of the Agreement.

APPENDIX 15.8 COMMUNICATIONS PROTOCOLS

Communication Protocols

Dated as of _____

These Communication Protocols have been drafted to assist in the operation of the Energy Storage Power Purchase Agreement between Seller and Buyer dated _____ (the “Agreement”). If there is any inconsistency between the Communication Protocols and the Agreement, the Agreement shall prevail. These Communication Protocols shall become effective as of the date first set forth above. The Parties acknowledge and agree that these Communication Protocols are subject to change and shall be modified as evolving market conditions and rules may require. Unless otherwise defined in these Communication Protocols, defined terms herein shall have the meanings ascribed in the Agreement.

1. Contacts and Authorized Representatives

The “Contact Information” tables sets forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. References in these Communication Protocols to notices by telephone, fax, or e-mail shall be deemed to refer to the applicable number set forth in the Contact Information Table.

2. Communication Protocols - General

2.1 Intra-day Communication: All communications and notices between the Parties that occur intra-day for the applicable trading day including those regarding emergencies, Dispatch Notices, Updated Dispatch Notices, Availability Notices, and notices to avoid imbalance penalties, uninstructed deviation charges/credits or any other CAISO charge types specified in the Agreement, shall be provided telephonically to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) Dispatch Desk, (2) Plant Manager. If to Buyer, such notices and communications shall be provided to the following contact, in order of priority, Real Time. Each Party shall confirm all Intra-day Communication either electronically or via fax as soon as practicable.

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and Buyer, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: Buyer and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

During Transmission System Emergencies, Seller’s operations staff shall communicate with Buyer’s Grid Operations Department via established communications devices. Buyer’s Grid Operations Department will periodically test the communications devices to be utilized during system emergencies.

2.4 Verbal Communication: Each Party shall provide confirmation (either electronically or via facsimile) of any telephonic operating notice or communication provided to the other Party as soon as practicable. All telephonic communication shall be subject to recording.

2.5 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreements and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.6 Staffing: Parties will have available 24 hours a day, seven days a week, personnel available to communicate regarding the implementation of these Communication Protocols.

Contact Information Table

Contacts and Authorized Representatives for Buyer

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by Buyer with timely Notice to Seller.

Contact	Primary Phone	Secondary Phone	Fax	Email
Real Time	858-650-6160	619-517-5661	858-650-6191	tsched@semprautilities.com
Day-Ahead Scheduling	858-650-6178	858-650-6160	858-650-6191	presched@semprautilities.com
Day-Ahead Trading	858-650-6137	858-650-6160	858-650-6191	presched@semprautilities.com jpasquito@semprautilities.com
Settlements – Power	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Contract Administration	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Outage Scheduling	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Transmission System Emergencies	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD

Contacts and Authorized Representatives for Seller

Outlined below is the contact and communication information for the relevant Seller employees. This list may be amended by Seller with timely Notice to Buyer.

Contact:	Primary Phone	Secondary Phone	Fax	Email
Dispatch Desk (Day Ahead)				
Dispatch Desk (Real Time)				
Outage Desk				
Plant Manager				
Contract Administration				
Settlements				
Operations Manager				
Operations Supervisor				

Pro-Forma Agreement Type	Date Issued
2024 Q2 Excess RA Electronic Solicitation	1/5/2024
2024 Q3 Excess RA Electronic Solicitation	3/18/2024
2024 Q4 Excess RA Electronic Solicitation	6/10/2024
2025 RA Solicitation	8/26/2024
Phase 3 Integrated Resource Planning Reliability RFO 2025-2031	3/6/2024
2024 Independent Evaluator Request for Proposals	6/28/2024
2024 RPS Unbundled REC Sales Request for Proposals	8/23/2024
SDG&E's 2024 CAISO Cluster 15 Request for Information for the Allocation of Commercial Interest Points	10/1/2024

Exhibit C
24 SDG&E ERRRA Menvielle
RFO Pro Forma PPA

Description
Sought to sell excess RA capacity products (Jul-Sep): CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex, Import Allocation Rights.
Sought to sell excess RA capacity products (Jul-Sep): CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex, Import Allocation Rights.
Sought to sell excess RA capacity products (Oct-Dec): CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex.
Sought to sell RA capacity products (Local and System) with load serving entities, marketers and generators. It is the intention of this solicitation to minimize the procurement cost impact for ratepayers while also meeting SDG&E's RA Requirement.
SDG&E sought through the Phase 3 Intergrated Resource Planning Reliability RFO to procure resources to meet electric system reliability needs as required by CPUC D.21-06-035, D.23-040 and D.24-02-047.
SDG&E issued this Request for Proposals (RFP) to solicit qualified parties to form SDG&E's pool of Independent Evaluators (IE) for 2025-2027.
As authorized by D.23-12-008, San Diego Gas & Electric Company (SDG&E) is issuing this Request for Proposal (RFP) to seek offers from third parties interested in purchasing 2022 and 2023 Portfolio Content Category 3, or PCC 3, REC product from eligible renewable resources under contract with SDG&E.
San Diego Gas & Electric Company (SDG&E) issues this Request for Information (RFI) seeking information from third parties (Respondents) with projects in the California Independent System Operator (CAISO)'s Cluster 15 interconnection queue seeking the opportunity to be awarded a Commercial Interest Point Allocation (CIPA) from SDG&E, in alignment with CAISO's Interconnection Process Enhancements.

CONFIDENTIAL
SDG&E DRAFT 3-5-2024

RENEWABLE ENERGY AND ENERGY STORAGE

POWER PURCHASE AGREEMENT

between

SAN DIEGO GAS & ELECTRIC COMPANY

as Buyer

and

[INSERT NAME OF SELLER]

as Seller

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RENEWABLE ENERGY AND ENERGY STORAGE POWER PURCHASE AGREEMENT

This Renewable Energy and Energy Storage Power Purchase Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 20____ (“Effective Date”) by SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation (“Buyer”), and [insert name and type of legal entity] (“Seller”). Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

RECITALS

This Agreement is made with reference to the following facts, among others:

A. Buyer is an investor-owned electric utility serving customers in San Diego and Orange counties.

B. Seller will develop, permit, design, procure, construct, commission, test, own, operate and maintain [insert description of facility] as more particularly described in Appendix 1.2.2 attached hereto (“Project”), consisting of a [insert type:] (a “Generation Facility”) and [insert number] [insert type:] (the “Energy Storage System”). The Project shall be constructed on an approximately [insert number] acre parcel of land (the “Site”) located adjacent to [insert name of substation] in [enter city and state]. [NOTE to Bidders: conforming changes needed if multiple Energy Storage Systems.]

C. Seller wishes to sell and deliver to Buyer, and Buyer wishes to purchase from Seller, Contract Capacity, Energy (including Bundled Green Energy), Resource Adequacy Benefits, Green Attributes, Ancillary Services, and all other products that may be produced from the Project, under the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows.

ARTICLE 1 PURCHASE AND SALE OF PRODUCT

1.1 Product. During the Delivery Period, Seller shall operate the Project and make available, deliver, and sell the Product therefrom to Buyer, and Buyer shall purchase and receive the Product therefrom, when and as the Project is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.1. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Contract Capacity, Capacity Attributes, Delivered Energy (including Bundled Green Energy), Green Attributes, Charging Energy, Ancillary Services or Resource Adequacy Benefits from any other resource or the market for delivery or charging hereunder, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

1.1.1 Capacity. During the Term, Buyer shall have the exclusive right to (i) the Contract Capacity and Capacity Attributes of the Generation Facility, and (ii) Charging Capacity, Discharging Capacity and Capacity Attributes of the Energy Storage System.

(a) **Generation Facility Capacity.** The Contract Capacity of the Generation Facility shall be the full generation capacity (in MW_{AC} or MW_{DC}) of the Generation Facility as specified in the Commercial Operation Certificate, which Contract Capacity shall be no greater than the Expected Generation Facility Contract Capacity and no less than [REDACTED] MW_{DC}.

(b) **Energy Storage System Capacity.** As of the Effective Date, the Contract Capacity of the Energy Storage System shall equal the Expected Energy Storage Contract Capacity of the Energy Storage System, without adjustment for temperature, pressure, humidity or other adjustment factors. The actual Contract Capacity of the Energy Storage System will be determined upon the completion of the Commercial Operation Test and Contract Capacity Test for the Energy Storage System and each year of the Delivery Period in accordance with the testing procedures of Sections 7.2 and 7.3, as applicable. Such tests will demonstrate the Contract Capacity of the Energy Storage System, which shall be the Contract Capacity for the Energy Storage System from and after such tests; *provided*, that in no event shall the Contract Capacity of the Energy Storage System exceed (i) PMAX for the Energy Storage System (i.e. the Contract Capacity for the Energy Storage System shall be limited to PMAX until such time as Seller gets PMAX increased to the tested Contract Capacity), (ii) the **[NOTE - based on bid: system RA quantity, local RA quantity and flex RA quantity]**, nor (iii) the Energy Storage System's Expected Energy Storage Contract Capacity as identified in Appendix 1.1.1. Seller agrees that the Energy Storage System is subject to the terms of the Availability Standards.

1.1.2 Energy. During the Term, Buyer shall have the exclusive right to the Delivered Energy (including Bundled Green Energy) of each Project System.

(a) **Bundled Green Energy.** The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer from the Generation Facility during each Contract Year is [REDACTED] MWh ("**Contract Quantity**"). Throughout the Delivery Period, Seller shall be required to deliver Bundled Green Energy to Buyer from the Project (in the aggregate) no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Period ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means, for a Performance Measurement Period, an amount of Bundled Green Energy for the Project, as measured in MWh, equal to [REDACTED].¹ Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have produced from the Generation Facility an amount of Generation Facility Bundled Green Energy that it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods.

¹ **NTD:** This should be 70% of the Contract Quantity.

(i) GEP Damages. If Seller actually delivers Generation Facility Bundled Green Energy during a Performance Measurement Period in an amount (together with (A) any deemed amounts set forth in the last sentence of Section 1.1.2(a) above during such Performance Measurement Period, and (B) GEP Damages Credited Amounts associated with the immediately-prior Performance Measurement Period) that is less than the Guaranteed Energy Production applicable to such Performance Measurement Period (“GEP Failure Event”), Seller shall be liable to Buyer for GEP Damages associated with such GEP Failure Event, which GEP Damages shall be paid by Seller no later than thirty (30) days following an invoice therefor by Buyer; provided that Buyer may instead elect to offset GEP Damages payable by Seller against future payments to be made to Seller under this Agreement or draw on Delivery Period Security for the payment thereof.

(b) Energy Storage System Energy. Subject to the terms and conditions of this Agreement, Seller commits to make the Energy Storage System available to accept Charging Energy and to deliver any and all Stored Energy to Buyer, and Buyer shall have the exclusive rights to schedule Charging Energy to the Energy Storage System and receive any and all Stored Energy of the Energy Storage System, subject to the Operating Restrictions set forth in Appendix 1.1 and Availability Notices provided in accordance with Section 18.1, including pursuant to a forward schedule or a Supplemental Energy instruction from CAISO. The actual Round-Trip Efficiency Rate of the Energy Storage System will be determined upon the completion of the Commercial Operation Test for the Project and from time to time in accordance with the testing procedures of Section 7.4. Such test will demonstrate the Tested Round-Trip Efficiency Rate of the Energy Storage System applicable from and after the completion of such test.

1.1.3 Ancillary Services. Buyer shall have the exclusive rights to any and all Ancillary Services Capacity and Associated Ancillary Services Energy associated with the Project with characteristics determined in accordance with the Tariff, in the amounts set forth in the following table(s): **[NOTE TO BIDDERS: Include all bid ancillary services only.]**

Ancillary Service Type	Ancillary Service Amount (MW or MW range, as applicable)
Spinning Reserve	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Non-Spinning Reserve	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Regulation Up	Up to Contract Capacity (PMAX) x 2
Regulation Down	Up to Contract Capacity (PMAX) x 2
Black Start	[]

1.1.4 Resource Adequacy Benefits. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term. Subject to the terms and conditions of this Agreement, Seller grants, pledges, assigns and otherwise commits to Buyer the full Contract Capacity and any other Capacity Attributes of the Project for use by Buyer in meeting its resource adequacy obligations under any Resource Adequacy Rulings. The Parties shall cooperate and take commercially reasonable actions (including amending this Agreement, executing such documents or instruments as is reasonably necessary, and complying with all

applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy Benefits performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the Project for Buyer's sole benefit through the Delivery Period. Without in any way limiting the foregoing, with respect to Capacity Attributes:

(a) Seller shall, on a timely basis, submit, or cause the Project's SC to submit (if Buyer is not acting as the Project's SC), Annual Supply Plans and Monthly Supply Plans in accordance with the Tariff, and any other decisions or orders of the CPUC associated with providing the Capacity Attributes under this Agreement, to identify and confirm the Expected Capacity Attributes provided to Buyer for each Showing Month.

(b) Seller shall or shall cause the Project's SC to submit (if Buyer is not acting as the Project's SC) written notification to Buyer, no later than fifteen (15) Business Days before the applicable RA Compliance Showing deadlines for each Showing Month, that Buyer will be credited with the Expected Capacity Attributes for each such Showing Month in the Project's Supply Plan.

(c) Seller shall (i) execute all other documents or instruments necessary, and provide all information otherwise needed, for the Product to be shown on Supply Plans and RA Compliance Showings and to be used to satisfy RA Compliance Obligations, including providing information with respect to the amount of Flexible Capacity and Inflexible Capacity available to be included in any applicable Supply Plan and RA Compliance Showing and (ii) execute all documents or instruments necessary and provide any information requested by Buyer related to the Project that is required to be provided to the CAISO or CPUC in order for Buyer to comply with Applicable Laws.

(d) At Buyer's request, the Parties shall execute such documents and instruments, and Seller shall reasonably cooperate and cause the Project's SC to cooperate with Buyer with respect to any testing or measurements that may be reasonably required to effect recognition and transfer of Capacity Attributes, if any, to Buyer.

(e) The Parties shall use commercially reasonable efforts to cause any Resource ID and the benefitting load serving entity SC identification number to be included in all applicable Supply Plans and to communicate changes in such information to each other promptly throughout the Delivery Period.

1.1.5 Change in Electric Market Design.

(a) If a Change in Tariff renders this Agreement or any terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date.

(b) Upon receipt of a Notice requesting negotiations, the Parties shall negotiate in good faith.

(c) If the Parties are unable, within sixty (60) days after the sending of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolutions procedures provided in Article 22.

(d) A change in cost will not in itself be deemed to render this Agreement or any terms therein incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure.

1.1.6 Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Generation Facility to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Generation Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Generation Facility.

(a) **WREGIS.** Prior to the initial delivery of Energy to Buyer, Seller shall register the Project in WREGIS, execute a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Seller's behalf, to upload generation information directly into WREGIS, and take all other actions necessary to ensure that the Green Attributes produced from the Project in an amount equal to the amount of Delivered Energy are issued and tracked for all regulatory reporting purposes, including (but not limited to) compliance with the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Within seventy-five (75) days after the initial delivery of energy to Buyer, Seller shall provide to Buyer written approval from WREGIS for Seller's generation to be reported to WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.

1.1.7 Exclusive Rights. Buyer shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, resale or remarketing of the Product.

1.1.8 Multiple-Use Application Compliance. The Parties agree that Applicable Laws includes the CPUC's Decision on Multiple-Use Application Issues, Decision No. 18-01-003 and the rules adopted thereto. In compliance with that decision, Seller acknowledges and represents and warrants that it has not sold, and will not sell during the Delivery Period except as otherwise required by Applicable Laws, any of the Capacity of the Project or any Product from the Project to any other buyer, except as otherwise permitted in this Agreement.

1.2 Project.

1.2.1 Product; Capacity. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project, without Buyer's prior written consent, which results in (a) a change to the Contract Capacity of the Generation Facility that exceeds the Expected Generation Facility Contract Capacity, (b) a change to the Contract Capacity of the Energy Storage System that

exceeds the Expected Energy Storage System Contract Capacity; or (c) any other material changes to the Project without Buyer's prior written consent, which may be provided in Buyer's sole and absolute discretion. For the avoidance of doubt, any of the following shall be subject to Buyer's consent: (a) any increase in the nameplate capacity (in kWDC) of the Generation Facility above the maximum amount specified therefor in Appendix 1.2.1, (b) any change in the physical location of the site for the Project specified therefor in Appendix 1.2.1, (c) any change in the technology type of the Generation Facility specified therefor in Appendix 1.2.1, or (d) any change in the technology type of the Energy Storage Facility specified therefor in Appendix 1.2.1.

1.2.2 Delivery of Energy. Delivered Energy from the Project shall be delivered to the Energy Delivery Point at a nominal voltage of [] volts line-to-line.

1.2.3 Generation Facility. The Generation Facility will consist of [insert description of storage system] and additional equipment, as described on Appendix 1.2.1 attached hereto. Any changes to the Project that causes the Generation Facility to be materially different from the description of the Generation Facility as described in Appendix 1.2.1, including any changes that result in the Contract Capacity of the Generation Facility to exceed the Expected Generation Facility Contract Capacity, shall require Buyer's written consent in an amendment to be exercised in Buyer's sole discretion.

1.2.4 Energy Storage Systems. The Energy Storage System will consist of [insert description of storage system] and additional equipment, as described on Appendix 1.2.2 attached hereto. The Stored Energy Measuring Device for the Energy Storage System shall be capable of measuring the instantaneous amount of Stored Energy (in increments of no larger than kilowatt-hours (kWh_{DC})), Maximum Energy Capacity (in kWh_{DC}) and State of Energy (as a %), utilizing a reasonably accurate methodology consistent with applicable Industry Standards, and providing such amount of Stored Energy, Maximum Energy Capacity and State of Energy on a real-time basis to Buyer. Any changes to Appendix 1.2.2, including any changes that result in the Contract Capacity of the Energy Storage System to exceed the Expected Energy Storage System Contract Capacity, shall require Buyer's written consent in an amendment to be exercised in Buyer's sole discretion.

1.2.5 Station Use. The Project may serve Station Use to the extent the Project is designed in a manner which allows or requires it to do so, and all Product stored or delivered hereunder will be net of Station Use.

1.2.6 Charging Energy. During the Delivery Period, Charging Energy for the Energy Storage System may be provided by the Generation Facility or from the CAISO Grid, at Buyer's election.

1.3 Delivery Points.

1.3.1 Energy Delivery Point. The Energy Delivery Point shall be the PNode at the Project's first point of interface with the CAISO Grid (as described and set forth in the single-line diagram of grid interconnection attached hereto as Appendix 1.3.1). Seller retains title and bears risk of loss related to Delivered Energy up to the Energy Delivery Point, and Buyer shall take title and bear risk of loss related to Delivered Energy at and from the Energy Delivery Point.

Buyer retains title and bears risk of loss related to Charging Energy up to the Energy Delivery Point, and Seller shall take title and bear risk of loss related to Charging Energy at and from the Energy Delivery Point. Notwithstanding the above, Seller acknowledges and agrees that any other agreement between it and Buyer, including any interconnection agreement, is separate and apart from this Agreement such that no other agreement shall modify or add to the Parties' obligations under this Agreement.

1.3.2 Electric Retail Delivery Point. Without limiting the provisions of Section 1.2.3, the Electric Retail Delivery Point is the point at the which the Project receives retail electricity from the Retail Electricity Provider for Station Use. Prior to the Project receiving retail electricity from the Retail Electricity Provider for Station Use, Seller shall provide Buyer a true and accurate description and depiction of such Electric Retail Delivery Point, and such description and depiction shall be attached hereto as Appendix 1.3.2.

ARTICLE 2

TERM; CONDITIONS PRECEDENT; DELIVERY PERIOD

2.1 Term. The "Term" of this Agreement shall commence upon the Effective Date and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the expiration of the Delivery Period.

2.2 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Effective Date until the CP Satisfaction Date, this Agreement shall be in full force and effect, enforceable and binding only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under this Section 2, including, as it relates to Section 2, the rights and obligations under Sections 3, 5, 6, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 25, Appendix A and the other appendices referenced in the foregoing Sections.

2.3 Obligations of the Parties. The Parties shall reasonably cooperate with each other to cause the Conditions Precedent to be satisfied as soon as reasonably practical.

2.3.1 Seller's Obligations. Prior to the CP Satisfaction Date, Seller shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Sections 2.4.2 and [insert others], (ii) use commercially reasonable efforts to pursue development of the Project in accordance with Sections 5 and 6, (iii) comply with Section 6 in achieving the applicable milestones in the Milestone Schedule that have due dates occurring prior to the CP Satisfaction Date, (iv) deliver the Monthly Progress Report in accordance with Section 6, and (v) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 25. Upon an Event of Default of Seller prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the full amount of the Pre-Construction Security. Buyer shall be entitled to recover such liquidated damages owed by Seller from the Pre-Construction Security held by Buyer if Seller has not paid such liquidated damages within five (5) Business Days following receipt of Notice of such Event of Default from Buyer. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Seller prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation

of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to the CP Satisfaction Date.

2.3.2 Buyer's Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Section 2.4.1, and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 25. Upon an Event of Default of Buyer prior to the CP Satisfaction Date, Seller may exercise remedies in accordance with Section 3.3.

2.4 Conditions Precedent. Subject to Section 2.2, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.5) of all of the following conditions precedent ("Conditions Precedent") by the deadline dates set forth below for each Condition Precedent without extension for Force Majeure or any other reason:

2.4.1 CPUC Approval. No later than [REDACTED], Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking approval thereof. If, within sixty (60) days, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

2.4.2 Electrical Interconnection. No later than [REDACTED], Seller shall have entered into a [Large/Small] Generator Interconnection Agreement providing for the construction of Interconnection Facilities necessary to maintain the "Full Capacity Deliverability Status" (as defined in the Tariff) of the Project and setting forth:

(a) an estimated in-service interconnection date for the "Participating TO's Interconnection Facilities," the "Network Upgrades," and the "Distribution Upgrades" (as each term is defined in the Tariff) of no later than [REDACTED] months after Seller provides the Participating Transmission Owner with the appropriate security and written authorization to proceed under its [Large/Small] Generator Interconnection Agreement for the Project; and

(b) a refundable cost for "Network Upgrades" (as defined in the Tariff) that Seller would be obligated to pay and would be entitled to reimbursement from the CAISO, a Participating Transmission Owner, or any other affected transmission provider thereunder.

2.4.3 INSERT OTHERS

2.5 Failure to Meet All Conditions Precedent.

2.5.1 Beneficiary Party.

(a) Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Section 2.4.2, and in order for a waiver of non-satisfaction of such Conditions Precedent

to be effective, both of the Parties must waive (exercisable in their sole discretion) non-satisfaction by the deadline date therefor.

(b) Buyer shall be the sole beneficiary of the Conditions Precedent set forth in Section 2.4.1, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Buyer alone must waive (exercisable in its sole discretion) non-satisfaction by the deadline date therefor.

(c) *[If Applicable:* Seller shall be the sole beneficiary of the Conditions Precedents set forth in Section 2.4.3, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (exercisable in its sole discretion) non-satisfaction by the deadline date therefor./

2.5.2 Termination. If the Condition Precedent set forth in Section 2.4.1 is not satisfied or waived in writing by Buyer on or before the deadline date therefor, without extension for Force Majeure or any other reason, then this Agreement shall automatically terminate (with no additional actions required by either Party to effect such termination) with no further obligation to either Party (other than as set forth in Section 2.5.2(b) below and any other payment obligations which have accrued and are payable at the time of termination). If any of the Conditions Precedent is not satisfied or waived in writing by the beneficiary Party or Parties thereto on or before the applicable deadline date therefor, without extension for Force Majeure or any other reason, then either of the Parties may terminate this Agreement with no further obligation to either Party (other than as set forth in Sections 2.5.2(a) below and any other payment obligations which are accrued and payable at the time of termination) by delivery of Notice to the other Party within fifteen days after the applicable deadline date. If a Party has the right to terminate this Agreement pursuant to this Section 2.5.2, but fails to deliver Notice of termination within each fifteen day period after each deadline date, then such Party's termination right per this Section 2.5.2 for such deadline date shall be deemed waived in its entirety.

(a) Upon a termination of this Agreement by either Party for any reason under Section 2.5 other than the failure of the Conditions Precedent set forth in Section 2.4.1 to be satisfied or waived by Buyer, Seller shall pay to Buyer an amount equal to the full amount of the Pre-Construction Security. Buyer may retain and draw upon the Pre-Construction Security to pay such amount.

(b) Upon a termination of this Agreement by either Party as a result of the failure of the Conditions Precedent set forth in Section 2.4.1 to be satisfied or waived by Buyer, Buyer shall return to Seller the undrawn portion of Pre-Construction Security.

2.6 Effectiveness of Agreement on and after CP Satisfaction Date. This Agreement shall be in full force and effect, enforceable and binding in all respects as of the CP Satisfaction Date until the conclusion of the Delivery Period or earlier termination pursuant to the terms of this Agreement; *provided* however, that upon the conclusion of the Delivery Period or upon earlier termination this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for the Product delivered prior to the end of the Delivery Period, the Termination Payment, indemnification payments or other damages, as applicable (whether directly or indirectly such as through set-off or netting) and (ii)

the undrawn portion of the Pre-Construction Security, Construction Period Security, or Delivery Period Security, as applicable, is released and/or returned as applicable to Seller (if any is due).

2.7 Guaranteed Initial Delivery Date. Subject to Section 2.10.2, Seller shall achieve the Initial Delivery Date (as defined in Section 2.8 below) by [insert date] (“Guaranteed Initial Delivery Date”). **[NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**

2.8 Delivery Period. The “Delivery Period” shall be the period during which the Product is available to Buyer, and will commence at 12:01 a.m. PPT on the Initial Delivery Date, and shall continue until midnight on the date that is the last day of the month in which the [(____) (____)] anniversary of the Initial Delivery Date occurs. The “Initial Delivery Date” shall be the first day of the first month after which all the following conditions have been satisfied:

(a) Seller has completed, to Buyer’s satisfaction, Seller’s obligations set forth in Articles 5, 6, and 7 in order to bring the Project into full operation as contemplated by this Agreement

(b) The Project has achieved Commercial Operation;

(c) Seller has received its market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;

(d) Seller has executed the Participating Generator Agreement, Meter Service Agreement, any contract for the provision of electric retail service (if required for the operation of the Project), and any other forms or agreements required by the CAISO or any Participating Transmission Owners with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);

(e) The Parties have taken all actions, including executing all documents and instruments, required to authorize Buyer to act as Scheduling Coordinator;

(f) Seller has entered into and complied with all obligations under all interconnection agreements, including the [Large/Small] Generator Interconnection Agreement, required to enable parallel operation of the Project with the Participating Transmission Owner’s electric system and CAISO Grid;

(g) Seller has taken all actions necessary to ensure that the Project is fully deliverable, as determined by the CAISO, for Resource Adequacy Benefits, including establishing the Net Qualifying Capacity of the Project and completing CAISO Certification, and Seller has delivered to Buyer a certification or other documentation from the CAISO that evidences that the Project is fully deliverable for the purposes of providing all such Resource Adequacy Benefits to Buyer;

(h) Seller has delivered to Buyer evidence reasonably satisfactory to Buyer confirming its compliance with the requirements of Article 4;

(i) Seller has provided Buyer Notice at least **[x]** days before the Initial Delivery Date;

(j) Seller has delivered to Buyer the required Delivery Period Security and related documents and instruments as set forth in Article 11; and

(k) The Priority Security Interest required under Section 11.4 shall continue to be perfected and in full force and effect.

The Parties agree that, in order for Buyer to dispatch the Project on the Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including, without limitation, Seller's delivering Availability Notices for the Initial Delivery Date as provided Section 15.1, and Buyer's delivering Dispatch Notices and submitting schedules for the Initial Delivery Date as provided in Article 15, in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Project on the Initial Delivery Date.

2.9 Early Initial Delivery Date. If Seller satisfies the conditions precedent set forth in Section 2.8 for the Initial Delivery Date prior to the applicable Guaranteed Initial Delivery Date, then such earlier date shall be the Initial Delivery Date under this Agreement; *provided*, however, in no event shall the Initial Delivery Date occur any earlier than **[_____]** without Buyer's prior written consent.

2.10 Delayed Initial Delivery Date.

2.10.1 Daily Delay Damages. If Seller has not satisfied the conditions precedent set forth in Section 2.8 for the Initial Delivery Date of the Project by the Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of the lesser of (a) one hundred twenty (120) calendar days less the number of days of extensions of the Guaranteed Initial Delivery Date due to Force Majeure, or (b) one-hundred (100) calendar days (the "Cure Period"). Buyer shall be entitled to recover the Daily Delay Damages owed by Seller from the Construction Period Security held by Buyer. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date would be difficult or impossible to predict with certainty, (b) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the Daily Delay Damages set forth in this section are the exclusive remedy for Seller's delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date but shall not otherwise act to limit any of Buyer's rights or remedies arising from any other Event of Default by Seller, including, without limitation, the failure by Seller to achieve the Initial Delivery Date by the end of the Cure Period following the Guaranteed Initial Delivery Date as set forth in Section 3.2(l).

2.10.2 Excused Delays. For all purposes under this Agreement, the Guaranteed Initial Delivery Date and the deadline to achieve each milestone listed on the Milestone Schedule will be extended on a day for day basis without imposition of any Daily Delay Damages to the extent that Seller is delayed in achieving any such milestone or achieving the Initial Delivery Date by the Guaranteed Initial Delivery Date due to any of the following events:

Force Majeure, provided that all extensions of any deadline listed on the Milestone Schedule or the Guaranteed Initial Delivery Date for the Project due to Force Majeure shall not exceed ninety (90) calendar days in the aggregate (“Maximum Force Majeure Delay”) and any delay by Seller in excess of the Maximum Force Majeure Delay shall be subject to Daily Delay Damages in accordance with Section 2.10.1.

2.11 CAISO Ancillary Services Certification. Seller shall take all necessary steps within its control to enable CAISO Ancillary Services Certification to occur within thirty (30) days after the Initial Delivery Date. If the CAISO Ancillary Services Certification has not occurred within thirty (30) days after the Initial Delivery Date, Seller shall owe liquidated damages to Buyer of **\$15,000 per day** of delay, provided that such thirty (30)-day deadline shall be extended on a day-for-day basis for reasons of Force Majeure or other events or circumstances outside of Seller’s reasonable control. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in CAISO Ancillary Services Certification would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for Seller’s delay in the CAISO Ancillary Services Certification on or before the deadline therefor.

ARTICLE 3 EVENTS OF DEFAULT; REMEDIES; TERMINATION

3.1 Events of Default. An “Event of Default” shall mean, with respect to either Party (a “Defaulting Party”), the occurrence of any of the following:

(a) The failure to make, when due, any payment in a material amount required under this Agreement if such failure is not remedied within three (3) Business Days after receipt of Notice;

(b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such failure is not cured within ten (10) days after receipt of Notice;

(c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within ten (10) days of receipt of Notice, or such longer period not to exceed sixty (60) days if the failure is not capable of being cured within such ten (10) days with the exercise of reasonable diligence, so long as the Defaulting Party has commenced and is diligently pursuing a cure during such initial ten (10) day period and such additional cure period could not reasonably be expected have a material adverse impact upon the non-Defaulting Party;

(d) Such Party becomes Bankrupt; or

(e) Such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 25.5; or

(f) Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such

consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

3.2 Seller Events of Default. An “Event of Default” shall mean, with respect to Seller as the “Defaulting Party”, the occurrence of any of the following:

- (a) Seller fails to comply with any of its covenants under Section 19.5;
- (b) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to Buyer;
- (c) Seller fails to comply with its obligations under Article 11, including without limitation failing to post or maintain the applicable Performance Assurance, within three (3) Business Days of receipt of Notice of such failure;
- (d) Seller makes any material misrepresentation or omission in any report, including status and metering report, or any Milestone Schedule or Availability Notice (including without limitation the log, records and reports required under Sections 8.1.2, 8.1.3, 8.1.4, 17.1, and Appendices 6.1(a) and (b), and Article 15) required to be made or furnished by Seller pursuant to this Agreement;
- (e) Seller fails to deliver or sell the Product from a Generation Facility for a period or a series of periods that is cumulatively longer than thirty (30) days, except to the extent such failure is due to one of the following:
 - (i) The Generation Facility is unavailable as a result of a Forced Outage that is not the result of Seller’s negligence or willful misconduct;
 - (ii) Force Majeure;
 - (iii) Buyer’s failure to perform;
 - (iv) The Generation Facility is unavailable as a result of a Scheduled Outage;
 - (v) A reduction in output as ordered under Dispatch Down Periods; or
 - (vi) Insufficient solar power for such Generating Facilities to generate energy;

(f) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, for delivery during the Delivery Period, the Product, or any portion thereof, to any party other than Buyer or pursuant to CAISO instruction;

(g) Seller delivers or attempts to deliver to the Energy Delivery Point for sale under this Agreement Energy from the CAISO Grid (other than, for the avoidance of doubt, any such Energy that was utilized as Charging Energy);

(h) Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period;

(i) During the Delivery Period, the Equivalent Availability Factor for the Energy Storage Facility is below 0.90 on average for a rolling period of twelve (12) consecutive months;

(j) During the Delivery Period, the Contract Capacity the Energy Storage System falls below seventy percent (70%) of the Expected Energy Storage Contract Capacity on average for a rolling period of twelve (12) consecutive months;

(k) During the Delivery Period, the Round-Trip Efficiency Rate Factor of the Energy Storage System is below 0.90 for more than six (6) months during any rolling period of twelve (12) consecutive months (for the avoidance of doubt, such six (6) months need not be continuous);

(l) Seller fails to achieve the Initial Delivery Date for the Project within the Cure Period following the Guaranteed Initial Delivery Date, as extended under Section 2.10.2;

(m) The ownership interest in Seller is pledged or assigned or caused or permitted to be pledged or assigned as collateral to any party other than pursuant to a Permitted Lien or in accordance with Section 12.1 or Section 25.5;

(n) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Section 21.2;

(o) Seller defaults under any Security Document in any material respect and such default is not cured within the applicable cure period, if any, set forth in the Security Document, or Seller repudiates, disaffirms, disclaims or rejects, in whole or in part, or challenges the validity of, any Security Document;

(p) With respect to Guarantor, if there is one:

(i) Any representation or warranty made by Guarantor in the Guaranty Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such failure shall not be cured within 10 days after receipt of Notice;

- (ii) The failure of Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in the Guaranty Agreement, if such failure is not remedied within one (1) Business Day (in the case of a failure to pay) and three (3) Business Days (in all other cases) after receipt of Notice;
- (iii) Guarantor becomes Bankrupt;
- (iv) The failure by Guarantor to maintain a Credit Rating of at least “BBB-” by S&P or “Baa3” by Moody’s and a tangible net worth of at least One Billion Dollars (\$1,000,000,000);
- (v) The Guaranty Agreement fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the indefeasible satisfaction of all of Seller’s obligations hereunder to which such Guaranty Agreement relates; or
- (vi) Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Guaranty Agreement; or

(q) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

- (i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s;
- (ii) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (iii) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (iv) such Letter of Credit fails or ceases to be in full force and effect at any time;
- (v) the issuer of such Letter of Credit becomes Bankrupt; or

- (vi) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit.

3.3 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (a) terminate this Agreement by providing Notice of such termination to the Defaulting Party, which termination shall be effective on a day no later than twenty (20) days after such Notice is effective (“Early Termination Date”), and the Defaulting Party shall pay the Non-Defaulting Party a Termination Payment as set forth below, (b) require immediate payment of all amounts owed but not yet paid by the Defaulting Party under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance, and (e) pursue any other remedies available at law or in equity, including where appropriate, specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement. If the Non-Defaulting Party elects to terminate this Agreement under clause (a) of this Section 3.3, then the sole and exclusive remedy available to the Non-Defaulting Party shall be the Termination Payment as set forth below.

3.4 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, the amounts owing between the Parties under this Agreement as of the Early Termination Date (the “Termination Payment”) in accordance with this Section. The Non-Defaulting Party shall calculate its Costs, and its Gains or Losses with respect to the Product from the Project in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information, provided that such third parties shall not be Affiliates of either Party. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to calculate its Gains and Losses. The Termination Payment shall equal the Settlement Amount plus any or all other amounts due to the Non-Defaulting Party (less amounts due to the Defaulting Party) netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero (0). Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a termination of this Agreement under Section 3.3(a) would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with such termination but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect to terminate this Agreement as its remedy for an Event of Default by the Defaulting Party.

3.5 Notice of Payment of Termination Payment. As soon as practicable, but in no event later than fifteen (15) Business Days following the Early Termination Date, the Non-Defaulting Party shall give the Defaulting Party Notice of the amount of the aggregate Termination Payment, if any. The Notice shall include a written statement explaining in reasonable detail the calculation

of such amount. The aggregate Termination Payment, if any, shall be made by the Defaulting Party to the Non-Defaulting Party within two (2) Business Days after receipt of such Notice.

3.6 Disputes Regarding Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

3.7 Suspension of Performance. Further to Section 3.3(d), if an Event of Default occurs and shall be continuing, the Non-Defaulting Party shall have the right to suspend performance under this Agreement upon Notice to the Defaulting Party. At any time prior to or after the receipt of such Notice by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or in equity, including without limitation the right to seek damages or injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

3.8 Bankruptcy Without Early Termination. In the event that Guarantor becomes Bankrupt, but Buyer does not declare an Early Termination Date, the bankruptcy shall not extinguish the Parties' obligations under this Agreement.

3.9 Effect of Termination. Termination of this Agreement shall not operate to discharge any liability which has been incurred by either Party prior to the effective date of such termination.

ARTICLE 4 INSURANCE

4.1 Required Insurance. From the CP Satisfaction Date and thereafter throughout the Term, Seller shall, at its own expense, maintain in force throughout the remaining Term of this Agreement and until released by Buyer the following minimum insurance coverages:

4.1.1 Workers' Compensation insurance or self-insurance in accordance with the laws and regulations of the State of California, providing statutory benefits and covering loss resulting from injury, sickness, disability or death of employees of Seller. In lieu of such insurance, Seller may maintain a self-insurance program meeting the requirements of the State of California.

4.1.2 Employer's liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per accident and per employee for disease.

4.1.3 Commercial General Liability Insurance insuring against liability for damages for personal injury (including bodily injury and death) and property damage. Such insurance shall provide premises/operations, products-completed operations, blanket contractual liability, explosion, collapse and underground coverage, broad form property damage, independent contractor's and personal injury insurance, punitive damages to the extent insurable under the laws of the State of California, in the amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate for combined bodily injury and property damage. There shall be no wildfire exclusion. Defense costs shall be provided as an additional benefit and may be included within the limits of liability.

4.1.4 Commercial or Business Automobile Liability Insurance insuring against liability for damages for bodily injury, death, or damage to property (including loss of use thereof), and occurring in any way related to the use, loading or unloading of any of Seller's automobiles for coverage of owned, non-owned, leased and hired vehicles, in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. Seller's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with applicable laws. Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 "any auto". If the services involve hauling hazardous materials, coverage shall be endorsed to include MCS 90 endorsement.

4.1.5 Excess or Umbrella Liability Insurance over and above the insurance required above in the amount of not less than [] Million Dollars (\$[,000,000.00) per occurrence/[] Million Dollars (\$[,000,000.00) aggregate.

The amounts of insurance required in Sections 4.1.2 through 4.1.4, may be satisfied by Seller purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

4.1.6 During the construction period for the Project, Builder's Risk insurance on an "all risk of physical loss or damage" basis, including coverage against damage or loss caused by earthquake, flood, windstorm, boiler, engine, and machinery accidents and performance testing and "Delay in Start-up" coverage. The Builder's Risk coverage shall include (i) coverage for the buildings, structures, boiler, machinery, equipment, facilities, fixtures, supplies, and other properties constituting a part of the Project, with an overall limit sufficient to cover repair or replacement; (ii) inland transit coverage for property and equipment that has been off-loaded from a vessel or aircraft until delivered to the Site; (iii) off-site coverage to insure any property or equipment described in (i) above not stored on the Site; (iv) removal of debris; (v) coverage for foundations and other property below the surface of the ground; (vi) expediting expenses; and (vii) hazardous substance cleanup. The Builder's Risk coverage shall modify the standard exclusion for damage caused by faulty workmanship, design or materials so as to insure resulting damage to property free of defective conditions.

4.1.7 After construction has been completed, All Risk property insurance coverage in the amount not less than the full replacement value of the Project, including a full replacement cost endorsement (no co-insurance) with no deduction for depreciation of property if actually replaced, providing, without limitation, (i) coverages against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, other risks from time to time included under "all risk" or "extended coverage" policies, earthquake, flood, collapse, sinkhole, subsidence and such other perils, (ii) off-site coverage as is sufficient to cover off-site equipment for which there have been progress payments, (iii) transit coverage (including ocean cargo where ocean transit will be required) as is sufficient to cover property in transit, and (iv) boiler and machinery coverage on a "comprehensive" basis including breakdown and repair with limits not less than the full replacement cost of the insured objects. The policy/policies shall include increased cost of construction coverage, debris removable, and building ordinance

coverage to pay for loss of “undamaged” property which may be required to be replaced due to enforcement of local, state, or federal ordinances.

4.1.8 If applicable to the scope of work during construction phase of the term of this Agreement, Aircraft/Watercraft Insurance, for all owned, non-owned and hired aircraft or watercraft used in connection with the operation of the Project, with a \$10,000,000 limit per occurrence for property damage and bodily injury, including passengers and crew; *provided*, such insurance may be provided by the provider of the non-owned or hired aircraft or watercraft.

4.1.9 Pollution Liability Insurance insuring against liability arising out of activities contemplated hereunder or as might be required by federal, state, regional, municipal and local laws, with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate. Seller may satisfy this requirement under Commercial General Liability insurance and Excess or Umbrella Liability insurance policies if such policies provide coverage as is provided for under a Pollution Liability insurance policy. The Buyer shall have the right to review such coverage within such policy and accept the terms or require additional coverage in Buyer’s reasonable discretion.

4.2 Additional Terms and Conditions.

4.2.1 All required insurance policies shall name Buyer, its parent, associated and affiliated companies and their respective directors, officers, agents, servants and employees as loss payees under the policy required in Section 4.1.6 and 4.1.7 as its interest may appear under this Agreement, and as additional insureds by endorsements under the policies required in Sections 4.1.3, 4.1.5, and 4.1.9.

4.2.2 All policies required under Sections 4.1.1, 4.1.2, 4.1.5, and 4.1.9 shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against Buyer.

4.2.3 All policies shall provide thirty (30) days’ advance written notice to Buyer for cancellation or any material change in coverage or condition and ten (10) days’ notice for non-payment.

4.2.4 All policies required under Sections 4.1.3 and 4.1.5 shall contain provisions that specify that the policies are primary and are not excess to or contributing with any insurance or self-insurance maintained by Buyer and shall contain a severability of interest or cross-indemnity clause.

4.2.5 Seller shall be responsible for its respective deductibles or retentions.

4.2.6 If any of the required insurance policies are written on a “claims made” basis, such policies shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

4.2.7 Certificates of insurance (including applicable endorsements and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer,

or by the insurance agent or broker authorized to do so, as evidence of all insurance policies under this Article) and summaries of all such insurance documents shall be sent to Buyer.

4.2.8 Buyer or Buyer's agent may inspect the original policies or require complete certified copies, at any time.

4.2.9 Seller shall require, and shall furnish Buyer with evidence of, the same insurance for its agents or contractors as Buyer requires of Seller.

4.2.10 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Parties under this Agreement.

4.3 Market Practicability.

4.3.1 In the event any insurance required to be maintained hereunder shall not be reasonably available and commercially feasible in the commercial insurance market, Buyer shall waive such requirement to the extent the maintenance thereof is not so available and feasible; *provided*, however, that (a) Seller shall first request any such waiver in writing, which request shall be accompanied by written reports prepared by an independent insurance broker, or an insurance consultant selected by Seller and reasonably acceptable to Buyer, explaining the extent to which such insurance is not reasonably available and commercially feasible (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions, the form and substance of such reports to be reasonably acceptable to Buyer; (b) at any time after the granting of any such waiver, but not more often than once a year, Buyer may request, and Seller shall furnish to Buyer supplemental reports reasonably acceptable to Buyer from such insurance broker updating its prior reports and reaffirming such conclusion; and (c) any such waiver shall be effective only so long as such insurance shall not be reasonably available and commercially feasible in the commercial insurance market.

4.3.2 If Buyer determines that the types or amounts of any insurance required to be maintained hereunder shall no longer be reasonably adequate, then Buyer may require revisions to the types or amounts of any insurance required hereunder but only if such revisions are commercially reasonable.

4.4 Application of Proceeds. Subject to the requirements of the Lenders' financing documents and the rights or remedies of the Lenders thereunder, Seller shall apply any and all insurance proceeds received in connection with the damage or destruction of the Project toward the repair, reconstruction or replacement of the Project; *provided*, however, that if the Project is damaged or destroyed due to an event of Force Majeure to an extent that results, or could reasonably be expected to result, in a repair schedule exceeding twelve (12) months, then, notwithstanding anything in this Agreement to the contrary, Seller shall not be obligated to repair, reconstruct or restore the Project unless and until Buyer waives termination under Section 18.3 for the reasonable duration of the repair. Seller shall use commercially reasonable efforts to include in the Lenders' financing documents an obligation on the part of Seller and the Lenders to apply the proceeds of physical damage, and similar insurance obtained by Seller in connection with the

Project to repair and maintain the Project in order to effectuate Seller's obligations under this Agreement. In no event shall Seller enter into an agreement with the Lenders respecting the use of insurance proceeds that is not consistent with generally accepted practices in similar financings within the electric industry.

ARTICLE 5 DESIGN AND CONSTRUCTION OF PROJECT

5.1 Seller's Obligations. At no cost to Buyer, Seller shall:

(a) Develop, design, procure, construct, commission, test, own, operate and maintain the Project as required for Seller to perform its obligations under this Agreement and in compliance with all Applicable Laws and Permit Requirements, including without limitation any Applicable Law related to safety, and any new or revised Required Permits or Applicable Laws that become effective during the Term;

(b) Acquire and maintain all entitlements, consents, franchises, permits, certificates, licenses, authorizations and approvals required by any applicable Governmental Authority (other than the CPUC Approval and requirements of Buyer as the Scheduling Coordinator pursuant to Article 17) for the design, development, construction, installation, testing, interconnection, operation, maintenance, monitoring, removal, and ownership of the Project (the "Required Permits");

(c) Pay all costs allocated to the Project related to acquiring and/or maintaining rights of way and upgrades to, and construction of, facilities required to interconnect the Project to the electric retail system and the Participating Transmission Owner's electric system and CAISO Grid under Full Capacity Deliverability Status (as defined in the Tariff), consistent with Applicable Laws and Seller's interconnection agreement.

5.2 Design Review.

5.2.1 In the event that construction of the Project has not commenced by the Effective Date, at Buyer's reasonable request, Seller shall provide to Buyer information related solely to operational characteristics of the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work.

5.2.2 Seller shall provide to Buyer Notice of any changes Seller proposes to make to the Project which will materially impact its operational characteristics and the operational characteristics of such changes, for Buyer's review as far in advance as practicable, but in no event less than thirty (30) days before the changes are to be made.

5.2.3 Buyer may notify Seller in writing of the results of Buyer's review of the information provided by Seller pursuant to Section 5.2.1 or 5.2.2, within thirty (30) days of Buyer's receipt of the specifications for the Project or the change, as appropriate, including a description of any flaws perceived by Buyer in the design.

5.2.4 Seller shall in good faith consider any of Buyer's proposed revisions to Seller's design provided, however, that Seller shall be solely responsible for the final design and shall have no obligation to implement any of Buyer's proposed revisions to Seller's design.

ARTICLE 6 CONSTRUCTION PERIOD AND MILESTONES

6.1 Milestone Schedule. In order to meet the Guaranteed Initial Delivery Date, Seller shall meet the construction milestones set forth on Appendix 6.1(a) ("Milestone Schedule"), subject to Section 6.2. No later than the 10th day of each month while the Project has not yet met its Initial Delivery Date, Seller shall deliver to Buyer a monthly progress report, substantially in the form set forth in Appendix 6.1(b) ("Monthly Progress Report"), describing its compliance with the Milestone Schedule, including projected time to completion of any milestones, for the Project. Seller shall include in any Monthly Progress Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and provide any such documents as may be reasonably requested by Buyer; *provided*, however, that Seller may redact such documents as necessary to comply with third-party confidentiality obligations. In addition, Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which it is aware which could materially impact its ability to meet the Milestone Schedule. Within seven (7) days after completion of each milestone in the Milestone Schedule, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Required Permits, and certificates) to reasonably demonstrate the achievement of such construction milestone.

6.2 Milestone Delay Damages and Recovery Plan. If Seller fails to achieve any milestone listed on the Milestone Schedule on or before the applicable deadline listed therein (prior to giving to any extension thereof by the payment of Daily Delay Damages pursuant to Section 2.10.1), Seller may cure such failure; provided, that:

6.2.1 Within five (5) Business Days prior to any such failure, Seller submits to Buyer (i) a written description of the reason for the anticipated failure, (ii) the date Seller expects it will achieve completion of the applicable milestone ("Milestone Extension Date"), (iii) a written recovery plan for completing all necessary work to achieve completion of the missed milestone, the remaining milestones, and the Initial Delivery Date by the Guaranteed Initial Delivery Date (including plans for accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) (the "Recovery Plan") and (iv) any required Daily Delay Damages in accordance with Section 2.10.1. The Recovery Plan shall also include an updated Milestone Schedule with revised dates for each of the remaining milestones, which updated Milestone Schedule shall reflect the payment of any Daily Delay Damages in accordance with Section 2.10.1. Any such Recovery Plan shall be subject to the approval of Buyer, such approval not to be unreasonably withheld or delayed.

6.2.2 Seller shall commence the work contemplated by the Recovery Plan after approval thereof by Buyer.

6.2.3 Seller shall be solely responsible for any costs or expenses incurred by Seller as a result of the formulation and implementation of the Recovery Plan.

6.2.4 If Seller fails in any material respect, as reasonably determined by Buyer, to: (i) meet the requirements of the Recovery Plan; (ii) make sufficient progress in effecting the Recovery Plan; or (iii) achieve completion of the missed milestone by the Milestone Extension Date, such failure shall be subject to a further attempt to cure only if, in Buyer's reasonable judgment, the Initial Delivery Date can still be achieved within the Cure Period.

6.3 Inspection Rights. Buyer shall have the right, upon reasonable prior notice to Seller, during the Term to enter onto the Site, inspect the Project and otherwise inspect or audit Seller's EPC Contracts and its books and records in order to verify Seller's compliance with the Milestone Schedule and the terms of this Agreement. While on the Site, Buyer shall be responsible for compliance with all applicable safety and security protocols established by Seller, and Buyer shall not interfere with the normal operation of the Project.

ARTICLE 7 COMMISSIONING; TESTING

7.1 Testing Costs. Seller will, at times and for durations reasonably agreed to by Buyer, conduct necessary testing set forth in this Article 7 to assess whether the Project and each of the Generation Facility and the Energy Storage System is functioning properly and is able to respond to Buyer Dispatch Notices or CAISO dispatch instructions. If a test is deemed a Buyer Cost Test hereunder, Buyer shall be obligated to provide (and pay for) the electricity required to charge the Energy Storage System relating to such test, and Energy from the Energy Storage System shall be treated as dispatched pursuant to Dispatch Notices by Buyer hereunder. For the avoidance of doubt, for any Buyer Cost Test Buyer be entitled to all CAISO revenues and other revenues associated with the Energy delivered from the Energy Storage System during such test. If a test is deemed a Seller Cost Test hereunder, (a) Seller shall be responsible for paying (i) the costs of all electricity required to charge the Energy Storage System relating to such test, (ii) the costs of purchasing, scheduling and delivering Charging Energy necessary to recharge the Energy Storage System so as to restore the Stored Energy that existed immediately prior to such test, and (iii) all CAISO costs and charges related to such test, and (b) Seller shall be entitled to all CAISO revenues and other revenues associated with the Energy delivered from the Energy Storage System during such test; *provided*, that at Buyer's election, Buyer may provide the Charging Energy necessary for such testing, in which case, Buyer shall be entitled to all CAISO revenues and other revenues associated with the Energy delivered from the Energy Storage System during such test. If a Seller Cost Test is performed during any period during which Buyer is the Scheduling Coordinator for the Project, Buyer shall pay Seller such revenues in the month following Buyer's receipt of such revenues.

7.2 Commercial Operation Test. At least seven (7) Business Days prior to the Initial Delivery Date, but no earlier than thirty (30) days prior to the Initial Delivery Date, Seller shall schedule and complete a Commercial Operation test for the Project (the "Commercial Operation Test"). Such Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7 hereto and shall be deemed a Seller Cost Test. Seller shall undertake such activities in sufficient time to achieve Commercial Operation by the Guaranteed Initial Delivery Date and Buyer will reasonably cooperate with Seller to meet such deadline. The Commercial Operation Test shall establish the initial level of Contract Capacity and Tested Round-Trip Efficiency Rate for purposes of calculating the Monthly Capacity Payment under Section 9.2.

7.3 Annual Contract Capacity Testing of Energy Storage System. At least once per Contract Year after the initial Contract Year, upon no less than twenty-four (24) hours prior Notice to Seller from Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), subject to Article 17 and the Availability Notices delivered by Seller hereunder, Seller shall schedule and complete a Contract Capacity Test for the Energy Storage System in accordance with Appendix 7. Such Contract Capacity Test shall be deemed a Seller Cost Test. No more frequently than once per calendar quarter, Seller shall have the right to run a retest of the Contract Capacity Test at any time upon twenty-four (24) hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices) and such retest shall be a Seller Cost Test. For all purposes of this Agreement, including Section 1.1.1 and Appendix 9.2, the Contract Capacity for the Energy Storage System determined pursuant to a Contract Capacity Test shall become the new Contract Capacity for the Energy Storage System at the beginning of the day following the completion of the test, subject to the limitations in Section 1.1.1.

7.4 Efficiency Rate Testing of Energy Storage System. From time to time during the Delivery Period, upon no less than forty-eight (48) hours prior Notice to Seller (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), Buyer may schedule and complete an Efficiency Rate Test in accordance with Appendix 7. The Efficiency Rate Test shall be deemed a Buyer Cost Test. No more frequently than once per calendar quarter, Seller shall have the right to run a retest of an Efficiency Rate Test at any time upon 24 hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). For all purposes of this Agreement, including Sections 1.1.2, 1.2.2 and Appendix 9.2, the Tested Round-Trip Efficiency Rate determined pursuant to an Efficiency Rate Test shall become the new Tested Round-Trip Efficiency Rate at the beginning of the day following the completion of the test.

7.5 Additional Required Testing. From time to time during the Delivery Period, upon no less than twenty-four (24) hours prior Notice to Seller, Buyer, the CPUC, the CAISO or other Governmental Authority having jurisdiction may require additional tests to be performed from time to time (including tests of the Generation Facility's or Energy Storage System's Capacity for Resource Adequacy capacity requirements). Such tests shall be deemed a Buyer Cost Test. No more frequently than once per calendar quarter, Seller shall have the right to run a retest of such additional test at any time upon twenty-four (24) hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), and such Seller-requested retest shall be a Seller Cost Test.

7.6 Seller-Initiated Tests. Seller may conduct any other discretionary tests, at times and for durations reasonably agreed to by Buyer (provided that it shall be deemed reasonable for Buyer to require such discretionary test to be performed on a day in which Buyer has not dispatched the Energy Storage System or the Generation Facility, as applicable), that Seller deems necessary for purposes of reliably operating the Project, the Energy Storage System, or the Generation Facility, or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) ("Seller Initiated Test"). All such Seller Initiated Tests shall be considered Seller Cost Tests. Buyer shall (at Seller's request and in Buyer's capacity as the Scheduling Coordinator hereunder) take commercially reasonable efforts to submit schedules to CAISO in accordance with the Tariff, Applicable Laws,

and Accepted Electrical Practices for the Product delivered in connection with each such Seller Initiated Test. Seller shall notify Buyer of any Seller-Initiated Test no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices).

7.7 Independent Witness. Buyer shall be entitled to have an independent third party witness any testing under this Article 7, provided that (a) such third party enters into a confidentiality agreement reasonably satisfactory to Seller, and (b) Buyer is responsible for all costs, expenses and fees payable or reimbursable to such third party.

7.8 Test Results. Seller will provide all CAISO certifications (including Commercial Operation, CAISO Certification, and CAISO Ancillary Services Certification) test results for the Project, the Generating Facility, or the Energy Storage System within five (5) Business Days of Seller's receipt for any initial or subsequent test throughout the Term of this Agreement.

ARTICLE 8 SELLER'S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

8.1 Seller's Operation Obligations.

8.1.1 When notified of a dispatch by Buyer (or the CAISO), Seller shall operate the Project in accordance with Accepted Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including without limitation the standards established by the California Electricity Generation Facilities Standards Committee, pursuant to Public Utilities Code Section 761.3, and enforced by the CPUC, and CAISO-mandated standards, as set forth in Section 5 of the Tariff (collectively, "Industry Standards"). In addition, Seller shall at all times maintain and operate the Energy Storage System in a safe manner as required by Accepted Electrical Practices, Industry Standards, statutes, regulations or other Applicable Law.

8.1.2 Seller shall maintain a daily operations log for the Project and the Energy Storage System which shall include but not be limited to information on power production, electricity consumption and efficiency (if applicable), availability, hourly average Stored Energy of the Energy Storage System, hourly average Maximum Energy Capacity of the Energy Storage System, maintenance performed, outages, changes in operating status, inspections and any other significant events related to the maintenance or operation of the Project. In addition, Seller shall maintain all records applicable to the Project, including the electrical characteristics of the Project and settings or adjustments to the control equipment and protective devices of the Project. Information maintained pursuant to this Section 8.1.2 shall be provided to Buyer, within 15 days of Buyer's request.

8.1.3 Seller shall maintain accurate records with respect to the tests required under Article 7 above, including the outcomes of such tests.

8.1.4 Seller shall maintain and make available to Buyer and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards, including those related to safety. Seller shall comply with all reporting requirements

and permit on-site audits, investigations, tests and inspections permitted or required under any Industry Standards or Applicable Laws.

8.1.5 Buyer or the CAISO may require Seller, at Seller's expense, to demonstrate to Buyer's commercially reasonable satisfaction the correct calibration and operation of Seller's Protective Apparatus at any time Buyer or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the Participating Transmission Owner's electric system or CAISO Grid. Buyer will reimburse Seller for all costs Seller incurs in such demonstration if the demonstration shows that the Protective Apparatus was functioning properly.

8.1.6 Seller shall, during the Term, only employ appropriately qualified (determined in Seller's reasonable opinion consistent with Accepted Electrical Practices) personnel for the purposes of operating and maintaining the Project. Seller shall at all times require such personnel to adhere to all applicable safety standards in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards.

8.2 Seller's Maintenance and Repair Obligations. Seller shall inspect, maintain and repair the Project, and any portion thereof, in accordance with applicable Industry Standards and Accepted Electrical Practices. Seller shall maintain and deliver maintenance and repair records of the Project to Buyer's scheduling representative upon request. Seller shall ensure that any contractor or subcontractor performing maintenance, repair, inspection or other work on the Project during the Term, only employ appropriately qualified (determined in Seller's reasonable opinion consistent with Accepted Electrical Practices) personnel for the purposes of operating and maintaining the Project. Seller shall at all times require such personnel to adhere to all applicable safety standards in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards.

ARTICLE 9 COMPENSATION

9.1 Compensation. Compensation to Seller shall consist of (a) a Monthly Capacity Payment calculated in accordance with Section 9.2, and (b) a Monthly Energy Payment calculated in accordance with Section 9.3. The Monthly Capacity Payment and Monthly Energy Payment will be paid each month, in arrears in accordance with Article 10, for each month of the Delivery Period.

9.2 Monthly Capacity Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly capacity payment determined in accordance with the calculation set forth in Appendix 9.2 (the "Monthly Capacity Payment"); *provided*, that Buyer shall not be required to pay the Monthly Capacity Payment for any month in which the Equivalent Availability Factor for the Energy Storage System is less than 0.90 or the Round-Trip Efficiency Rate Factor for the Energy Storage System is less than 0.90. [For the month in which the Initial Delivery Date occurs, the Monthly Capacity Payment will be prorated for the remaining days of that month. For the last month of the Term, the Monthly Capacity Payment will be prorated for the number of days remaining in the Term.]

9.3 Monthly Energy Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly energy payment determined in accordance with the calculations set forth in Appendix 9.3 (the “Monthly Energy Payment”).

9.4 Additional Compensation. Except with respect to revenue derived from a Seller Cost Test as set forth in Article 7 or Availability Incentive Payments as contemplated by Section 14.4, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer.

ARTICLE 10 PAYMENT AND BILLING

10.1 Billing Period. The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payment). As soon as practicable after the end of each month (but no later than ten (10) Business Days after the end of each month), each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, together with all supporting documentation and calculation necessary to evidence all amounts charged thereunder.

10.2 Timeliness of Payment. All undisputed amounts in invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the 20th day of each month, or the 10th day after receipt of the invoice, or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable methods, to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

10.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice, or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error, within 24 months of the date of invoice or adjustment. Any dispute with respect to an invoice is waived unless the other Party receives Notice under this Section 10.3 within 24 months after the invoice is rendered or any specific adjustment to the invoice is made. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within three (3) Business Days of such resolution along with interest accrued at the Default Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon written request (the “Overpayment Notice”) or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Default Rate from and including the date that is three (3) Business Days following receipt of an Overpayment Notice to but excluding the date repaid or deducted by the Party receiving such overpayment.

10.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

10.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, interest and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 11 CREDIT AND COLLATERAL

11.1 Financial Information. If requested by one Party, the other Party shall deliver:

(a) Within 120 days following the end of each fiscal year, a copy of its (and, if applicable, its Guarantor's) annual report containing audited consolidated financial statements for such fiscal year;

(b) Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its (and, if applicable, its Guarantor's) quarterly report containing unaudited consolidated financial statements for such fiscal quarter.

A Party shall have satisfied this requirement if such statements are posted and publicly available within the time frames specified above on a Party or its Guarantor's corporate website or the U.S. Securities and Exchange commission website (<http://www.sec.gov/>). In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; *provided*, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

11.2 Seller's Credit Requirements.

11.2.1 Credit Requirement During Pre-Construction Period. From the Effective Date to the CP Satisfaction Date, Seller shall provide and maintain Performance Assurance in an amount equal to \$[] **[NOTE to Bidders: Please see RFO document for collateral requirements.]** (the "Pre-Construction Security") in order to secure Seller's obligations hereunder. Except to the extent Seller elects to apply the Pre-Construction Security to the Construction Period Security, Buyer shall promptly return to Seller the unused portion of the Pre-Construction Security after the earlier of (a) the date on which Seller has delivered the Construction Period Security, and (b) termination of the Agreement by either Party under Section 2.5.2(b).

11.2.2 Credit Requirement During Construction Period. From the CP Satisfaction Date to the Initial Delivery Date, Seller shall provide and maintain additional Performance Assurance so that the total amount of Performance Assurance is equal to \$[insert] **[NOTE to Bidders: Please see RFO document for collateral requirements.]** (the "Construction Period

Security”) in order to secure Seller’s obligations hereunder. Except to the extent Seller elects to apply the Construction Period Security to the Delivery Period Security, Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (a) the date on which Seller has delivered the Delivery Period Security, and (b) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.

11.2.3 Credit Requirements During Delivery Period. Throughout the Delivery Period, Seller shall provide and maintain Performance Assurance to Buyer in an amount equal to [Sinsert] [NOTE to Bidders: Please see RFO document for collateral requirements] to secure Seller’s obligations hereunder (“Delivery Period Security”). Buyer shall promptly return to Seller the unused portion of the Delivery Period Security after the following have occurred: (a) the Delivery Period has expired or terminated early; and (b) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

11.3 Form of Performance Assurance.

11.3.1 Cash. In the event that Seller elects to provide cash as the applicable Performance Assurance, Buyer shall deposit (or cause to be deposited) such cash in an account bearing interest at the rate per annum equal to the Interest Rate. Interest shall be calculated monthly (without compounding) at a monthly rate of 1/12 of such Interest Rate, shall be retained in such account, and shall be applied toward the amount of the applicable Performance Assurance, and any amount in excess of the required amount of applicable Performance Assurance on the last Business Day of each calendar year shall be returned to Seller.

11.3.2 Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit. If Seller fails to renew or cause the renewal of any outstanding Letter of Credit on a timely basis as provided in this Section 11.3.2, Buyer shall have the right to draw the entire amount of such Letter of Credit.

(b) Upon, or at any time after it has been determined that Seller has forfeited all or part of its Pre-Construction Security, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that Seller has forfeited all or part of its Pre-Construction Security in the amount set forth in Section 2.3.1 or 2.5.2 as applicable. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be for the account of Buyer.

(c) In the event Seller incurs Daily Delay Damages pursuant to Section 2.10.1, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit upon

submission to the bank issuing such Letter of Credit one or more certificates specifying that such Daily Delay Damages have been incurred and are unpaid. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be for the account of Buyer in satisfaction of Seller's obligations hereunder.

(d) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then Buyer may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be used to offset Buyer's damages and to the extent in excess of Buyer's damages shall be deemed Performance Assurance as security for the Seller's obligations to Buyer and Buyer shall at all times have the exclusive dominion and control of, and at no time shall Seller have any rights or powers to direct or control such cash proceeds. Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (i) for any failure to provide sufficient Performance Assurance as required under this Agreement, and (ii) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(e) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.

11.3.3 Guaranty. Performance Assurance provided in the form of a Guaranty Agreement, if offered from Seller, shall be from a Guarantor reasonably acceptable to Buyer and satisfying the following: (i) the Guarantor shall maintain a Credit Rating of at least "BBB-" by S&P or "Baa3" by Moody's and (ii) a tangible net worth of at least One Billion Dollars (\$1,000,000,000).

11.4 First Priority Security Interest. To secure Seller's performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Priority Security Interest") in, and lien on (and right of setoff against), and assignment of, Seller's rights in respect of the Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action and execute all such documents, instruments, agreements and certifications (to be effective as the same time as such Performance Assurance is required to be provided) as Buyer reasonably requires in order to perfect Buyer's Priority Security Interest in, and lien on (and right of setoff against), such collateral, any and all amounts deposited therein, and any and all proceeds resulting therefrom or from the liquidation thereof. In addition, Seller authorizes Buyer to file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Priority Security Interests. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer may do any one or more of the following if amounts due and owing by Seller remain unpaid:

(a) Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;

- Buyer's possession;
- (b) Exercise its rights of setoff against any and all property of Seller in Buyer's possession;
 - (c) Draw on any outstanding Letter of Credit issued for its benefit; or
 - (d) Liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

Buyer does not have and will not have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever. Seller agrees that it shall not have any grounds for insecurity with respect to the creditworthiness of Buyer, and hereby waives all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines.

ARTICLE 12 COLLATERAL ASSIGNMENT

12.1 Consent to Collateral Assignment. Subject to the provisions of this Article, Seller shall have the right to assign all its rights, title and interests in the Project, Site, other real, personal and other of its properties, and this Agreement as collateral for any financing or refinancing of the Project. In connection with any such collateral assignment, Seller shall enter into a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement") in in form and substance customary in the industry and reasonably agreed to by Buyer, Seller and Lender. Any requests for a Collateral Assignment Agreement must be received by Buyer at least forty-five (45) days in advance of the anticipated closing date for the transaction in question. Seller shall also be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including attorneys' fees.

ARTICLE 13 GOVERNMENTAL AND ENVIRONMENTAL CHARGES

13.1 Governmental Charges. Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Government Authority ("Governmental Charges") on or with respect to the Product prior to the Energy Delivery Point. For the avoidance of doubt, such Governmental Charges shall include ad valorem taxes of Seller that are related to the Project, and franchise or income taxes that are related to the sale of the Product to Buyer and which arise or are imposed prior to the Energy Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Product which arise or are imposed at and from the Energy Delivery Point. In the event Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Laws to remit or pay Governmental

Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charge from the sum due to Seller under Article 10. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. This Section shall not apply to CAISO charges, penalties, costs, or revenues associated with operation of the Project or transmission of the Product allocated pursuant to Section 14.4.

13.2 Compliance with Laws and Indemnification. Seller shall be solely responsible for any fines, penalties or other charges which result from Seller's failure to obtain or maintain such Required Permits and/or operate the Project in accordance with Applicable Laws and Permit Requirements. No such fines, penalties or charges shall be passed through to Buyer.

13.3 Environmental Costs. Seller shall be solely responsible for all Environmental Costs with respect to the Project.

ARTICLE 14 SCHEDULING COORDINATOR

14.1 VER Forecasting Program Requirements. Seller shall cause the Generation Facility to become a Participating Intermittent Resource, including by executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Generation Facility becoming a Participating Intermittent Resource and participating in the VER Forecasting Program. Seller and Buyer shall comply with the VER Forecasting Program, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the VER Forecasting Program, for the Delivery Period. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Generation Facility as a Participating Intermittent Resource prior to the Commercial Operation Date. In the event that the VER Forecasting Program or the Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the Parties as of the date of this Agreement.

14.2 Buyer Scheduling Coordinator. At least thirty (30) days prior to the beginning of testing of the Generation Facility or Energy Storage System, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Generation Facility or Energy Storage System (as applicable) effective as of the start-up, testing and commissioning thereof. During the Term, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer may withhold all Monthly Capacity Payments and Monthly Energy Payments that would otherwise be due to Seller until Buyer is fully authorized as the Scheduling Coordinator for the Generation Facility or Energy Storage System (as applicable). Upon Buyer's reasonable determination that it is fully authorized to act as Scheduling Coordinator for the Project, Buyer shall pay all withheld Monthly Capacity Payments or Monthly Energy Payments on the next applicable payment date therefor. **[NOTE to Bidders: parties to discuss SC duties during pre-commercial operation testing.]**

14.3 Notices. Buyer shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the Tariff regarding the Project's status, including, but not limited to, all Outage Management System Outage Requests, OMS Forced Outages, or CAISO Forced Outage Reports (in each case, as defined in the Tariff). In accordance with this Article and Article 18, Buyer will cooperate with Seller to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

14.4 CAISO Costs and Revenues. Except as otherwise set forth below or elsewhere in this Agreement, Seller shall be responsible for all CAISO charges and penalties associated with the operation of the Project, transmission of Delivered Energy to the Energy Delivery Point, and receiving at and transmitting Charging Energy from the Energy Delivery Point, and Buyer shall be responsible for all CAISO charges and penalties associated with transmitting Charging Energy to the Energy Delivery Point and receiving Delivered Energy at the Energy Delivery Point. Except as otherwise set forth below or elsewhere in this Agreement, Buyer shall be responsible for CAISO costs (including penalties and other charges (including Negative Imbalance Energy costs or revenues)) and receive all CAISO revenues (including credits and other payments (including Positive Imbalance Energy revenues or costs)) incurred as a result of providing Scheduling Coordinator services, including costs and revenues associated with CAISO dispatches. Notwithstanding anything contained herein to the contrary, Seller shall be responsible for (a) Non-Availability Charges, (b) Uninstructed Imbalance Energy charges and Uninstructed Deviation Penalties, (c) Ancillary Services No-Pay charges, and (d) all CAISO charges or payments incurred as a consequence of Seller either failing to notify Buyer of outages in a timely manner as set forth in Article 17 or failing to abide by the Tariff (including deviations from Scheduled Energy that are attributable to Seller's failure to abide by the Tariff). Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

14.4.1 Generation Facility Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Generation Facility Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Generation Facility Grid Delivered Energy will deviate from the amount of Generation Facility Scheduled Energy. When Generation Facility Grid Delivered Energy minus Generation Facility Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy;" when Generation Facility Grid Delivered Energy minus Generation Facility Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy." Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals.

14.5 CAISO Settlements. Buyer shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for all CAISO charges or payments ("CAISO Charges Invoice") for which Seller is responsible under this Agreement in accordance with the applicable billing and payment methodologies utilized for the specific CAISO charge type as set forth in the Tariff and/or related CAISO procedure. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges

that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

14.6 Terminating Buyer's Designation as Scheduling Coordinator. The Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for each of the Generation Facility and the Energy Storage System as of 11:59 p.m. on the date that is the earlier of the expiration of the Term or the Early Termination Date ("SC Replacement Date"), regardless of which Party designated such expiration or termination date. The necessary actions include the following, to be performed no later than 30 days prior to such date: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator therefor to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator therefor effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting and reaching agreement about terms with any replacement Scheduling Coordinator.

14.7 CAISO Sanctions. If during the Delivery Period, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Project, the Generation Facility or Energy Storage System or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

14.8 Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Generation Facility and the Energy Storage System. Buyer, as Scheduling Coordinator, shall not change such data without Seller's prior written consent.

ARTICLE 15

SCHEDULING, DISPATCH NOTICES and OPERATING RESTRICTIONS

15.1 Scheduling Generally. Buyer shall submit schedules to the CAISO for each of the Generation Facility and the Energy Storage System in accordance with Tariff protocols for Day-Ahead and Hour-Ahead Schedules and Supplemental Energy and Ancillary Services bids as applicable and in accordance with the Operating Procedures, and provide such other services described in this Article. Buyer will submit bids to the CAISO that are in accordance with the Operating Restrictions of the Energy Storage System as specified in Appendix 1.1.

15.2 System Requirements. For the Generation Facility and Energy Storage System, Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary (a) for Seller to respond and follow instructions, including an electronic signal conveying real time instructions, to operate the

Generation Facility and Energy Storage System as directed by the Buyer and/or the CAISO (including to implement a System Dispatch Down or an Economic Dispatch Down) in accordance with the then-current methodology used to transmit such instructions as it may change from time to time, and (b) for Buyer and/or the CAISO to control the quantity of Product generated or delivered by the Generation Facility and Energy Storage System, in each case, in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. As of the Effective Date, the systems required to comply with clause (a) include at a minimum the CAISO's Automatic Dispatch System (as described in the CAISO website) and the systems required to comply with clause (b) include at a minimum the CAISO'S Application Programming Interfaces (as described in the CAISO website). If at any time during the Delivery Period Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all commercially reasonable steps necessary to become compliant as soon as possible. Seller shall be liable pursuant to Section 15.6 for failure to comply with a Dispatch Notice during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Dispatch Notice (including an order directing a Dispatch Down Period) provided via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If an electronic submittal is not possible, Buyer and/or the CAISO may provide Dispatch Notices by (in order or preference) electronic mail, telephonically, or facsimile transmission to Seller's personnel designated to receive such communications, as provided by Seller in writing and Seller shall maintain communications systems necessary to permit such transmittal of Dispatch Notices.

15.3 Generation Facility Scheduling and Dispatch Down. The following provisions of this Section 15.3 shall apply to the Generation Facility:

15.3.1 VER Forecasting Program Requirements. For the Generation Facility, consistent with the requirements of Section 15.1, Buyer's Schedules and any updates to such Schedules to the CAISO shall be based on the most current forecast of Generation Facility Delivered Energy consistent with the VER Forecasting Program whenever the VER Forecasting Program is available, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever the VER Forecasting Program is not available. In all cases, consistent with its Economic Dispatch Down curtailment rights, Buyer (as the Scheduling Coordinator) may submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule a Generation Facility's Product with the CAISO.

15.3.2 Annual Delivery Schedules. No later than forty-five (45) days before (a) the first day of the first Contract Year of the Delivery Period and (b) the beginning of each calendar year for every subsequent Contract Year during the Delivery Period, Seller shall provide a non-binding forecast of each month's average-day expected Generation Facility Delivered Energy for each Project System, by hour, for the following calendar year.

15.3.3 Monthly Delivery Schedules. No later than ten (10) Business Days before the beginning of each month during the Delivery Period, Seller shall provide a non-binding forecast of each day's average expected Generation Facility Delivered Energy for each Project System, by hour, for the following month ("Monthly Delivery Forecast").

15.3.4 Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, for the Generation Facility, Seller shall provide Buyer with a non-binding forecast of the Generation Facility's Available Generation Capacity (or if the VER Forecasting Program is not available for any reason, the expected Generation Facility Delivered Energy) for each hour of the immediately succeeding day ("Day-Ahead Forecast"), it being understood that, consistent with its Economic Dispatch Down curtailment rights, Buyer (as the Scheduling Coordinator) may submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Generation Facility's Product with the CAISO. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Generation Facility's Available Generation Capacity (or if the VER Forecasting Program is not available for any reason, the expected Generation Facility Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

15.3.5 Real Time Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Generation Facility Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole) from a Generation Facility, Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Article 17. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Generation Facility during or after the end of the outage.

15.3.6 Dispatch Down Periods.

(a) Generally. Seller shall reduce delivery amounts from a Generation Facility as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period for the Generation Facility. Buyer shall have no obligation to pay Seller for any Product delivered from the Generation Facility in violation of this Section 15.3.6(a) or for any Product from the Generation Facility that Seller would have been able to deliver but for the fact of a curtailment of the Generation Facility (other than a curtailment that is the result of an Economic Dispatch Down as provided in Section 15.3.6(b) below).

(b) Economic Dispatch Down. Each of Buyer and the CAISO has the right to order Seller to curtail deliveries of Energy from a Generation Facility to the Energy Delivery Point for Economic Dispatch Down purposes, seven days per week and 24 hours per day

(including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically via the communications systems described in Section 15.2, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each such Dispatch Notice will be effective unless and until Buyer (or the CAISO) modifies such Dispatch Notice by providing Seller with an Updated Dispatch Notice. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices and Updated Dispatch Notices will be made in accordance with the timelines as specified in the Tariff. Seller agrees to adjust the Generation Facility Delivered Energy as set forth in a Dispatch Notice that meets the requirements of Economic Dispatch Down.

- (i) Buyer Payments. Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such Economic Dispatch Down occurred, an amount equal to the product of (A) the amount of Deemed Generation Facility Bundled Green Energy resulting from such Economic Dispatch Down, multiplied by (B) the Energy Price, except to the extent Seller received a Sales Price for such Deemed Generation Facility Bundled Green Energy, in which case clause (B) above shall be the amount that the Energy Price exceeds such Sales Price for such Deemed Generation Facility Bundled Green Energy.
- (ii) Additional Provisions. The Parties shall describe with more specificity the Economic Dispatch Down and Charging Energy process (including the automated communication process for Dispatch Notices) in the Operating Procedures.

15.4 Energy Storage System Scheduling and Dispatch. The following provisions of this Section 15.4 shall apply to the Energy Storage System:

15.4.1 Availability Notices. Subject to Section 15.7, during the Delivery Period (or earlier to enable dispatches and deliveries on the Initial Delivery Date), no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer with an hourly schedule of the Available Storage Capacity that the Energy Storage System is expected to have for each hour of such schedule day (the "Availability Notice"). Seller will notify Buyer immediately if the Available Storage Capacity of the Project may change after Buyer's receipt of an Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices. Seller shall provide Availability Notices using the form attached in Appendix 15.1 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.

15.4.2 Charging Energy Responsibilities. Except as expressly set forth in this Agreement, during the Delivery Period, Seller shall be responsible, at Seller's sole cost and expense, for delivering all of the Charging Energy from the Generation Facility to the Energy Storage System in accordance with Section 15.4.3.

15.4.3 Dispatch Notices. Subject to the Availability Notices delivered by Seller hereunder, Buyer and CAISO will each have the right to dispatch the Energy Storage System for charging or discharging seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically (in the forms attached to this Agreement in Appendix 15.4.3 or such other form as may be agreed to by the Parties in the Operating Procedures), and subject to the requirements and limitations set forth in this Agreement and the Operating Restrictions. Subject to Section 15.7, each Dispatch Notice will be effective unless and until Buyer modifies such Dispatch Notice by providing Seller with an Updated Dispatch Notice. If an electronic submittal is not possible for reasons beyond Buyer's or Seller's control, Buyer may provide Dispatch Notices and Updated Dispatch Notices by (in order or preference) electronic mail, telephonically, or facsimile transmission to Seller's personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices and Updated Dispatch Notices will be made in accordance with Market Notice Timelines for dispatches as specified in the Tariff. In dispatching the Energy Storage System, Buyer, as Scheduling Coordinator for the Energy Storage System, shall assume a Round-Trip Efficiency Rate equal to the then most-recent Tested Round-Trip Efficiency Rate. During the Term, Seller shall not operate an Energy Storage System (including the charging and discharging of Energy) other than (a) as dispatched by Buyer or CAISO or (b) for testing of the Energy Storage System in accordance with Article 7.

15.5 CAISO Dispatch. Any dispatch by the CAISO for any reason, whether pursuant to an RMR Contract or in connection with any Seller's must-offer obligations or otherwise, shall be deemed to be dispatches by Buyer, and the Energy dispatched is for Buyer's benefit hereunder, and Buyer shall pay all associated costs for such CAISO dispatches in accordance with the terms of this Agreement as if such dispatches were directed by Buyer. Buyer shall be entitled to receive and retain for its own account any and all CAISO revenue for such dispatches, including without limitation any availability payments under an RMR Contract for the Project.

15.6 Failure to Comply with Dispatch Notices. If Seller fails to comply with a Dispatch Notice (or Updated Dispatch Notice) that is in compliance with this Agreement, then, to the extent of the deviation resulting from such failure, Seller shall pay Buyer an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for any excess Delivered Energy caused by such failure to comply (for example, the Energy Price), and (B) is all Imbalance Energy costs or charges (excluding any revenues or credits) associated therewith, and (C) is any penalties, charges, or other direct economic losses resulting from Seller's failure to comply with the Dispatch Notice.

15.7 Operating Restrictions. All Operating Restrictions associated with the Product are specified on Appendix 1.1 and are subject to change from time to time based on changes in Applicable Laws or Required Permits, in each case, occurring after the CP Satisfaction Date. If Buyer submits a Dispatch Notice or an Updated Dispatch Notice that does not conform with the Operating Restrictions, then Seller shall notify Buyer of the non-conformity, and Buyer will modify its Dispatch Notice or Updated Dispatch Notice to conform to the applicable Operating Restrictions. Until such time as Buyer submits a modified Dispatch Notice or Updated Dispatch Notice, Seller shall deliver the Product in accordance with the Operating Restrictions.

15.8 Daily Operating Report. Seller shall provide Buyer the Daily Operating Report, as attached in Appendix 15.8, the day immediately after each operating day, for the Generation Facility and Energy Storage System.

15.9 Writing Requirements. In documenting and confirming Dispatch Notices, conversations between the Parties' personnel and contractors may be recorded by tape or other electronic means and any such recording will satisfy any "writing" requirements under Applicable Law.

15.10 Communication Protocols. Parties shall agree to the communication protocols outlined in Appendix 15.10 to facilitate exchange of information between the parties.

15.11 Operating Procedures. No later than forty-five (45) days before the Initial Delivery Date of the Project, and from time to time thereafter as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Outage reporting; (4) procedures for delivery forecasting; (5) charging and discharging procedures; (6) procedures for record keeping; (7) Scheduling procedures; and (8) invoicing and payment procedures; *provided*, that the failure to agree on these operating procedures ("Operating Procedures") will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 22.

15.12 Standards of Care.

15.12.1 CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (a) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (b) WECC scheduling practices and (c) Accepted Electrical Practices.

15.12.2. Reliability Standard. Seller agrees to abide by all (a) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities," and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

15.13 Co-Located Projects. The Parties acknowledge that this Agreement, including Articles 15 and 16, anticipate that the Generation Facility and Energy Storage System will be "co-located" with separate resource IDs for the Generation Facility and Energy Storage System.

**ARTICLE 16
METERING, COMMUNICATIONS, and TELEMETRY**

16.1 Electric Metering, Communication, Telemetry, and Access. Seller shall install, activate and maintain metering, communication and telemetry equipment as required by the Tariff, this Agreement, and Seller's [Large/Small] Generator Interconnection Agreement, including

without limitation, the installation of separate CAISO revenue meters as necessary to ensure a separate resource ID with the CAISO for the Generation Facility and Energy Storage System, separate communication equipment for the Generation Facility and Energy Storage System, and other requirements as may be necessary to permit separate dispatch and identification of costs for the Generation Facility and Energy Storage System. Communication equipment must be capable at a minimum of supporting the Communication Protocols in Appendix 15.8. Seller shall provide Buyer access to the information provided to CAISO under the Tariff.

16.1.1 Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Accepted Electrical Practices and the Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.

16.1.2 Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement, deliveries shall be measured by reference to Seller's check-meters, if any are installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and reasonable approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy under the terms of the Meter Service Agreement was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

16.1.3 MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate under the Meter Service Agreement, the Delivered Energy is increased or decreased, the revised Delivered Energy shall be used for purposes of calculating payments. If any of such amounts for any period have already been calculated using the previous amount of Delivered Energy, they shall be recalculated using the revised amount of Delivered Energy. If the recalculation changes the amount payable for the period in question, revised payments shall be made by Buyer or Seller, as applicable, in accordance with Section 10.3.

16.2 Real-Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Generation Facility and Energy Storage System in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.

16.3 Retail Electric Meter. To the extent the Project is not designed in a manner which allows or requires it to serve Station Use, then during the Delivery Period, Seller shall have installed and maintained an electric retail meter as further described in Appendix 1.2.2 in accordance with the Project's applicable retail electric service provider's tariff rules for retail electric service. **[Parties to discuss Station Use]**

ARTICLE 17 OUTAGES

17.1 Scheduled Outages.

17.1.1 No later than July 1 of each calendar year during the Delivery Period, and at least sixty (60) days prior to the anticipated Initial Delivery Date, Seller shall submit to Buyer Seller's schedule of proposed Scheduled Outages ("Outage Schedule") for the Generation Facility and Energy Storage System for the following calendar year in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Industry Standards, accommodate Buyer's requests regarding the timing of any Scheduled Outage. Seller may propose changes to any previously scheduled outage fifteen (15) days prior to such scheduled outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer's receipt thereof, in Buyer's sole discretion but consistent with Industry Standards and Accepted Electrical Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Scheduled Outages with the CAISO. Seller will communicate to Buyer all changes to a Scheduled Outage and estimated time of return of the Project as soon as practicable after the condition causing the change becomes known to Seller.

17.1.2 If reasonably required in accordance with Accepted Electrical Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 17.1.1. Seller shall provide Notice to Buyer within the time period determined by the CAISO, as a "Resource Adequacy Resource" that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 17.1.2 to periods when Buyer does not reasonably believe the Generation Facility or Energy Storage System, as applicable, will be dispatched.

17.2 No Scheduled Outages During Summer Months. Except as scheduled by the Parties under Section 17.1.2, no outages shall be scheduled or planned from June 1 through October 31 during each year of the Delivery Period. In the event that the Seller has a previously Scheduled Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Scheduled Outage.

17.3 Notice of Unscheduled Outages. Seller shall notify Buyer by telephoning Buyer's Dispatch Desk no later than ten (10) minutes following the occurrence of an Unscheduled Outage of the Generation Facility or Energy Storage System, or if Seller has knowledge that an Unscheduled Outage thereof will occur, within twenty (20) minutes of determining that such Unscheduled Outage will occur, utilizing an outage notification form reasonably prescribed by Buyer by Notice to Seller. Seller shall relay outage information to Buyer as required by the Tariff within twenty (20) minutes of the Unscheduled Outage and to CAISO in accordance with the outage notification requirements of the Tariff. Seller will communicate to Buyer the estimated time of return of the Generation Facility or Energy Storage System, as applicable, as soon as

practical after Seller has knowledge thereof. Seller shall be responsible for all outage coordination communications with the CAISO.

17.4 Inspection. In the event of an Unscheduled Outage, Buyer shall have the option to inspect the Project and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Project.

17.5 Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unscheduled Outages or Scheduled Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any Applicable Laws. Seller shall also report all Unscheduled Outages or Scheduled Outages in the Daily Operating Report.

ARTICLE 18 FORCE MAJEURE

18.1 No Default for Force Majeure. A Party shall not be in default in the performance of its obligations under this Agreement when and to the extent that the failure or delay of its performance is due to an event of Force Majeure. However, a failure to make payments when due shall not be excused; except to the extent such failure is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

18.2 Force Majeure Claim. If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected. The following procedure shall apply in the event there occurs a Force Majeure:

(a) The Claiming Party, as soon as reasonably practical (but in no event more than five (5) Business Days after the occurrence of such Force Majeure), shall give the other Party written Notice describing the particulars of the occurrence; *provided*, that the failure to timely provide such Notice as required pursuant to this Section 18.2(a) shall constitute an irrevocable waiver of the right of the Claiming Party to declare a Force Majeure under this Section 18.2 with respect to any such Force Majeure for which notice is not timely provided pursuant to this Section 18.2(a);

(b) The Claiming Party, within five (5) Business Days of providing Notice of occurrence of the Force Majeure under clause (a) above, shall provide evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;

(c) The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;

(d) The Claiming Party shall use commercially reasonable efforts to remedy its inability to perform as soon as possible. This subsection shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. The Parties agree and understand that the settlement

of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party; and

(e) As soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

18.3 Termination for Force Majeure. If any Force Majeure event shall suspend performance by a Claiming Party for more than six (6) months from the date of Notice provided by such Claiming Party in Section 18.2(a), then, unless such Force Majeure event was caused by the Event of Default of the other Party or other delay or failure of the other Party in performing a material obligation under this Agreement, such other Party may, at any time following the end of such six (6)-month period, terminate this Agreement upon thirty (30) days prior written Notice to the Claiming Party, without further obligation by the terminating Party, except as to the payment of any costs and liabilities incurred prior to the effective date of such termination. Except to the extent Buyer may be entitled to Daily Delay Damages under Section 2.10.1, if this Agreement is terminated by Buyer under this Section 18.3, then within five (5) days following such termination, Buyer shall return to Seller any and all Letters of Credit, cash deposit, or any other forms of security or credit support previously provided by Seller and held at that time by Buyer.

ARTICLE 19 REPRESENTATIONS, WARRANTIES AND COVENANTS

19.1 Representations and Warranties of Both Parties. As of the Effective Date and/or the CP Satisfaction Date (as applicable), each Party represents and warrants to the other Party that:

19.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

19.1.2 As of the CP Satisfaction Date, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, other than with respect to Seller, any of those Required Permits that satisfy all of the following: it is not required prior to the start of construction of the Project, it is not subject to the discretionary action of the applicable Governmental Authority, and it otherwise can be obtained in the ordinary course of business;

19.1.3 The execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;

19.1.4 This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

19.1.5 It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

19.1.6 Except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or in Seller's case, Guarantor, if applicable, any

legal proceedings that could materially adversely affect such party's ability to perform its obligations under this Agreement or the Guaranty Agreement, as applicable;

19.1.7 No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

19.1.8 It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

19.1.9 It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code and an "eligible contract participant" within the meaning of the Commodity Exchange Act;

19.1.10 It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product under this Agreement; and

19.1.11 As of the Effective Date, it is not subject to an event of Force Majeure.

19.2 Additional Representations and Warranties of Seller. Seller represents, warrants and covenants to Buyer that:

19.2.1 As of the CP Satisfaction Date and subject to Permitted Liens, Seller has Site Control and will maintain Site Control for the remainder of the Term;

19.2.2 Seller will execute a PGA and MSA prior to the Delivery Period, Seller will deliver to Buyer a true and complete copy of such PGA and MSA, and such PGA and MSA, as originally executed by Seller, shall remain in full force and effect throughout the entire Delivery Period, subject to such amendments or modifications as are deemed desirable or necessary by Seller and the CAISO, subject to approval of such amendments or modifications by Buyer, which approval shall not be unreasonably delayed or withheld;

19.2.3 Seller will execute all necessary grid connection, maintenance, or transmission facility services agreements prior to the commencement of the Delivery Period, Seller will deliver to Buyer a true and complete copy of such agreements, and such agreements, as originally executed by Seller, shall remain in full force and effect throughout the entire Delivery Period, subject to such amendments or modifications as are deemed desirable or necessary by Seller and the counter-party to such agreements, subject to approval of such amendments or modifications by Buyer, which approval shall not be unreasonably delayed or withheld;

19.2.4 Throughout the Delivery Period that: (a) the Generation Facility and Energy Storage System qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and

(b) the output of the Generation Facility and Energy Storage System delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard;

19.2.5 Throughout the Delivery Period the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation; and

19.2.6 As of the Effective Date, Seller has not used, granted, pledged, assigned or otherwise committed to deliver during the Delivery Period any Contract Capacity of the Project to meet the Resource Adequacy requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

19.2.7 Seller has considered long-term climate risks to the Project as required by Ordering Paragraph 14 of CPUC decision D.20-08-046.

19.3 Additional Covenants of Both Parties. Each Party covenants that through the Delivery Period:

19.3.1 It shall continue to be duly organized, validly existing and in good standing under the Applicable Laws of the jurisdiction of its formation;

19.3.2 It shall maintain (or obtain from time to time as required, including through renewal, as applicable, prior to such performance) all Governmental Authority approvals and Required Permits necessary for it to legally perform its obligations under this Agreement;

19.3.3 It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions of its governing documents, any contracts to which it is a party or any Applicable Law; and

19.3.4 It shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

19.4 Seller’s Affirmative Covenants.

19.4.1 Seller shall maintain and preserve its existence as a [limited liability company] formed under the laws of the State of [_____] and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.

19.4.2 Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of Buyer with respect to its Priority Security Interest furnished pursuant to this Agreement.

19.4.3 Seller covenants throughout the Delivery Period that Seller shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

19.5 Seller's Negative Covenants.

19.5.1 Except for Permitted Liens, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person any lien on Seller's interest in the Site, the Project, or any part thereof or interest therein. Seller shall promptly pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller's interest in the Site, the Project, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Site, the Project or a material part thereof or interest therein. Seller shall promptly notify Buyer of any attachment or imposition of any lien against Seller's interest in the Site, the Project, or any part thereof or interest therein. Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than directly associated with the development, construction, ownership or operation of the Project.

19.5.2 Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

19.5.3 Seller will not use, grant, pledge, assign or otherwise commit to deliver during the Delivery Period any Contract Capacity of the Project to meet the Resource Adequacy requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

19.5.4 Seller shall not charge or discharge the Energy Storage System other than (a) as dispatched by Buyer or CAISO pursuant to Article 15, or (b) pursuant to a test in accordance with Article 7.

19.6 Additional Representations, Warranties and Covenants of Buyer. Buyer represents, warrants, and covenants to Seller that:

19.6.1 Buyer shall cooperate with Seller to obtain approval(s) from any applicable Governmental Authorities with respect to governmental approvals needed by Seller.

19.6.2 Buyer shall ensure that Buyer personnel that enter the Site for any reason shall comply at all times with the safety and security procedures established by Seller and Seller's contractor(s).

19.6.3 Buyer shall not schedule, or allow the CAISO or any third party to schedule, the Project in violation of the Operating Restrictions or as otherwise not permitted in this Agreement.

19.6.4 Buyer, in its role as Scheduling Coordinator, shall not violate the Tariff or Industry Standards, or any combination of the foregoing.

ARTICLE 20 LIMITATIONS

20.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PRODUCT, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURE OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. UNLESS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY (OTHER THAN INJUNCTIVE RELIEF AS PROVIDED IN THIS AGREEMENT) ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES TO BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY (OTHER THAN INJUNCTIVE RELIEF AS PROVIDED IN THIS AGREEMENT) ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHATSOEVER UNDER ANY THEORY, INCLUDING WITHOUT LIMITATION, BY STATUTE, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, (PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM), RESULTING FROM A PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER OR TERMINATION OF THIS AGREEMENT. THE PARTIES INTEND THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NOTHING IN THIS SECTION PREVENTS OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS UNDER THE SECURITY DOCUMENTS.

20.2 No Representation by Buyer. Any review by Buyer of the Project or changes thereto, including, but not limited to, the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for Buyer's information. By making such review, Buyer makes no representation as to the economic and technical feasibility, operational

capability, or reliability of the Project, and Seller shall in no way represent to any third party that any such review by Buyer of the Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Project by Buyer constitutes any such representation by Buyer. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

ARTICLE 21 RECORDS

21.1 Performance under this Agreement. Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than three (3) years after final payment is made under this Agreement.

21.2 Sarbanes-Oxley and Securities and Exchange Commission Requirements. The Parties acknowledge that accounting principles generally accepted in the United States of America (“GAAP”) and SEC rules require Buyer and its independent auditor to evaluate whether Buyer must consolidate Seller’s financial information (but not financial information of Seller’s constituent members unless deemed to be included in the entity under GAAP). Buyer will require access to certain records, including but not limited to financial records, and personnel of Seller to determine if consolidated financial reporting is required. If Buyer and its independent auditor determine at any time that the Buyer must consolidate the Seller’s financial statements to comply with GAAP and/or SEC rules regarding consolidated financial reporting, then:

(a) Buyer shall require from Seller and Seller agrees to provide to Buyer the following during the Term of this Agreement:

(i) Unaudited financial statements of the Seller prepared in accordance with GAAP as of the end of the quarterly period. The financial statements should include quarter to date and year to date information and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);

(ii) Unaudited financial schedules of the Seller, as deemed necessary for Buyer to prepare its consolidated financial statements and related footnotes to the financial statements in accordance with GAAP as of the end of the quarterly period. The financial schedules should include quarter to date and year to date information underlying the financial statements and footnotes to the financial statements and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);

(iii) Access to Seller’s accounting and other records, and accounting and management personnel as reasonably determined by both Buyer and Seller so that (A) Buyer’s independent auditor or its internal auditors may conduct financial audits (in accordance with the standards of the Public Company Accounting Oversight Board (United States)) as well as internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002) and (B) Buyer can be provided analytical information, as needed, to enable Buyer to meet its SEC filing requirements, including but not limited to those under Item 2 on Form 10-Q,

and Item 7 on Form 10-K, “Management’s Discussion and Analysis of Financial Condition and Results of Operations;”

(iv) Upon the request of Buyer, such certifications by a duly authorized representative(s) of Seller as may be reasonably requested by Buyer (which certifications shall presumptively be reasonable if the certifications are substantially identical to those required by Buyer or its parent of business units of Buyer or its parent); and

(v) As reasonably requested by Buyer, such information or schedules, similar to the items noted in clauses (i)-(iv) above, to enable Buyer to prepare consolidated financial statements and schedules as may be required for Buyer to obtain financing or to prepare other reports as required by regulatory bodies, such as the SEC, for periods other than as of the end of the monthly, quarterly or year to date periods then ended.

(b) If Buyer (i) in its sole discretion determines that the financial statements of the Seller would be considered material to the Buyer or its parent company’s financial statements, financial condition, or internal controls over financial reporting, and (ii) reasonably determines Seller’s internal controls over financial reporting are not operating effectively or have resulted in a control deficiency, Buyer shall provide Notice to Seller. Upon receipt of such Notice, Seller will have thirty (30) days to remediate any deficiency in Seller’s internal controls over financial reporting identified by the Buyer, which Buyer and Buyer’s independent auditor deem to be necessary to ensure Seller’s internal controls over financial reporting are adequate, during or as a result of the audits permitted under Section 21.2(a)(iii) or any other.

(c) As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to Buyer a Notice describing such occurrence in sufficient detail to permit the Buyer to file a report on SEC Form 8-K. Such occurrences include all reportable events on the then current Form 8-K that applies to Buyer and its parent company at such time, including but not limited to a material acquisition or disposition of assets, a material direct financial obligation or off-balance sheet financing arrangement, material litigation, and the execution or termination of a material contract.

(d) Any information provided to Buyer shall be treated as Confidential Information except that it may be disclosed in connection with the preparation, review, certification and publication of Buyer’s financial statements.

(e) Seller shall notify Buyer at any time during the term of this Agreement of any services provided or proposed to be provided to Seller by Buyer’s independent auditor. Seller, and any of Seller’s Affiliates, are prohibited from engaging Buyer’s independent auditor for any services or in any consulting agreement without the express written consent of partner in charge of Buyer’s independent audit.

21.3 Other Regulatory and Governmental Requirements. At Buyer’s request, Seller shall maintain and deliver to Buyer copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under Sections 21.1 and 21.2, in order to comply with all Applicable Laws.

21.4 Audit Rights. Either Party shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of the other Party to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Each Party shall promptly comply with any reasonable request by the other Party and provide copies of such documents, records or data to the requesting Party. The rights and obligations under this Section 21.4 shall survive the termination of this Agreement for a period of two (2) years.

ARTICLE 22 DISPUTES

22.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article 22. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Article 22.

22.2 Management Negotiations.

22.2.1 The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

22.2.2 Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

22.2.3 All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

22.2.4 If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 22.2.1 above, refuses or does not meet within the ten (10) Business Day period specified in Section 22.2.1 above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

22.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 22.2 above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration").

22.3.2 Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in AAA's Commercial Arbitration Rules.

22.3.3 At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

22.3.4 The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

22.3.5 The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

22.3.6 The arbitrator's award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.

22.3.7 Judgment on the award may be entered in any court having jurisdiction.

22.3.8 The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.

22.3.9 The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.

22.3.10 The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.

22.3.11 The existence, content, and results of any Arbitration hereunder is Confidential Information that is subject to the provisions of Section 24.1.

22.4 WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

22.5 Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 23 INDEMNIFICATION

23.1 Indemnities

(a) Indemnity by Seller. Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("Claims") to the extent resulting from, or arising out of (i) any event, circumstance, act, or incident relating to the Product delivered by Seller under this Agreement up to the Energy Delivery Point or Charging Energy received by Seller under this Agreement after the Energy Delivery Point, (ii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (iii) the failure by Seller or the failure of the Project to comply with Applicable Laws, including without limitation the Tariff, (iv) a breach of its covenants, representations, or warranties under this Agreement, (v) any Governmental Charges for which Seller is responsible hereunder, (vi) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, and (vii) the Project serving Station Use, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim if caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

(b) Indemnity by Buyer. Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Energy Delivery Point or Charging Energy delivered by Buyer under this Agreement up to the Energy Delivery Point, (ii) the failure by Buyer to comply with Applicable Laws, including without limitation the Tariff, (iii) a breach of its covenants, representations or warranties under this Agreement, or (iv) any Governmental Charges for which Buyer is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by

the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

23.2 Insurance. The provisions of this Article 23 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.

23.3 Survival. All indemnity rights shall survive the termination of this Agreement.

ARTICLE 24 CONFIDENTIALITY/REGULATORY DISCLOSURE

24.1 Confidentiality.

24.1.1 General. Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, Lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 24.1.2; (v) in order to comply with any Applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in clause (vii); (vi) to a Qualified Assignee subject to an appropriate non-disclosure agreement; or (vii) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 24.1.1 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

24.1.2 Specific Terms. Notwithstanding Section 24.1.1, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Period, Project location, Contract Capacity, Guaranteed Initial Delivery Date and Energy Delivery Point.

24.1.3 Publicity. Except as otherwise agreed to in this Section 24.1, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.

24.2 Ownership of Information. All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement.

24.3 Enforcement. The Parties agree that irreparable damage would occur if the confidentiality obligations under this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this Article 24 and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

ARTICLE 25 MISCELLANEOUS

25.1 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in Pacific Prevailing Time unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect its obligations under the Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

25.2 Notices. Unless otherwise provided in this Agreement, any Notice shall be in writing to the address provided below and delivered by hand delivery, United States mail, overnight courier service, facsimile, or electronic messaging (e-mail). Notice by facsimile, electronic messaging (e-mail), or hand delivery shall be effective at the close of business on the day received, if the entire document was received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day after it was sent for “next-day delivery” or its equivalent by a nationally-recognized overnight courier or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after it was sent. Notice by United States mail shall be effective on the day it was received. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 25.2.

To Buyer:
San Diego Gas & Electric Company
8315 Century Park Court, CP21D
San Diego, California 92123
Attention: Director of Procurement and Portfolio Design
Telephone: 858-650-6156
Facsimile: 858-650-6191

To Seller:

Attention: _____

Telephone: _____

Facsimile: _____

25.3 Governing Law; Venue. This Agreement shall be construed under the laws of the State of California without giving effect to choice of law provisions that might apply the laws of a different jurisdiction. The Parties hereby consent to conduct all dispute resolution, judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to or arising from this Agreement in the City of San Diego, California.

25.4 Amendment. This Agreement can only be amended by a writing signed by both Parties.

25.5 Assignment. Except as provided in Article 12 above and Sections 25.5.1 and 25.5.2 below, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of at least fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the value of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Any assignment in violation of this Section 25.5 shall be null and void.

25.6 Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

25.7 Waiver. None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

25.8 Obligations Surviving Termination. 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, without limitation, representations, warranties, covenants and rights and

obligations with respect to audits, indemnification, payment and settlement, confidentiality, shall so survive.

25.9 No Third Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

25.10 Entire Agreement. Except for the Security Documents, this Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement that is not set forth in this Agreement.

25.11 Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement. In the event any such provision of this Agreement is so held invalid, illegal or void, the Parties shall promptly renegotiate in good faith new provisions to restore this Agreement as near as possible to its original intent and effect.

25.12 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

25.13 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. dist., No. 1 of Snohomish* 554 US 527 (2008).

25.14 Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties hereto or to impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

25.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from

any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

25.16 Interpretation. The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; *provided* that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends. Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies. Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Appendix A, unless otherwise specified. Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement. Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions. All references to dollars are to U.S. dollars.

25.17 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any Agreement, or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

(Signature page follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

[INSERT SELLER NAME]

By: _____
Name: _____
Title: _____

SAN DIEGO GAS & ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

APPENDIX A DEFINITIONS

“AAA” means the American Arbitration Association.

“Accepted Electrical Practices” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of other, but rather to those practices, methods and act generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

“Accepted Expenditures” has the meaning set forth in Section 1.5.1.

“ADS” means CAISO’s Automatic Dispatching System.

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreement” means this Renewable Energy and Energy Storage Power Purchase Agreement between Buyer and Seller, and any and all amendments as may be executed between Buyer and Seller from time to time.

“Ancillary Services” means spinning, non-spinning, regulation up, regulation down, frequency regulation, black start, voltage support, and any other ancillary services that the Project is capable of providing from time to time during the Delivery Period, consistent with the Operating Restrictions set forth in Appendix 1.1, as each is defined in the Tariff. **[NOTE to Bidders: please tailor to reflect ancillary services bid.]**

“Ancillary Services Capacity” or “A/S Capacity” means capacity associated with Ancillary Services available to Buyer within the scope of operations allowed Buyer under Section 1.1.3.

“Annual Supply Plan” has the meaning set forth in the Tariff.

“Applicable Laws” means all applicable statutes, laws, court decisions, ordinances, rules, order, writ, subpoena or regulations of any Governmental Authority, or the rules or regulations of any exchange or control grid operator.

“Arbitration” has the meaning set forth in Section 22.3.

“Associated Ancillary Services Energy” means the Energy expressed in megawatt-hours (“MWh”) expressly associated with the Ancillary Services Capacity made available from the Energy Storage System at the instruction of the CAISO.

“Associated Energy” means the Energy expressed in megawatt-hours (“MWh”) or kilowatt-hours (“KWh”), expressly associated with Contract Capacity dispatched under this Agreement.

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Availability Notice” means an hourly schedule of the amounts of Available Storage Capacity that the Energy Storage System is expected to be available during each hour of the day to which the Availability Notice pertains, pursuant to Section 15.1.

“Availability Standards” shall mean Availability Standards as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Available Generation Capacity” means the capacity of the Generation Facility, expressed in MWs, that is available to generate Energy.

“Available Storage Capacity” means the amount of Charging Capacity and Discharging Capacity that is available to Buyer under this Agreement from the Energy Storage System on average during an hour.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not stayed or dismissed within 90 days thereafter, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Bundled Green Energy” means, with respect to each Project System, the Generation Facility Bundled Green Energy and Energy Storage System Bundled Green Energy for such Project System, without duplication.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the United States Thanksgiving holiday, or a Federal Reserve Bank holiday.

“Buyer” has the meaning set forth in the introductory paragraph hereto.

“Buyer Cost Test” means any test requested by Buyer hereunder.

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all Participating Transmission Owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions.

“CAISO Certification” means the certification and testing requirements for a generating unit set forth in the Tariff, including certification and testing for all Ancillary Services (included in this Agreement) and PMAX and PMIN.

“CAISO Charges Invoice” has the meaning set forth in Section 14.4.

“CAISO Grid” means the system of transmission lines, distribution equipment and associated facilities of the Participating Transmission Owners that are within the CAISO’s balancing authority.

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, et seq) or its successor agency.

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of a Project System to produce or deliver Energy or ancillary services, including but not limited to any accounting construct so that the Energy Storage Capacity of the Energy Storage System or capacity of the Generation Facility may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Generation Facility or Energy Storage System to generate or deliver Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other similar products.

“Charging Capacity” means the maximum dependable operating capability of the Energy Storage System, measured in MW_{DC}, to charge electric energy into a partially or fully discharged storage device. Charging Capacity shall be determined from information obtained from the Energy Storage System’s SCADA as to whether and to the extent that the Energy Storage System is (a) in an emergency, stop, service mode or pause state; (b) in “run” status and faulted; (c) incapable of being controlled or (d) otherwise not fully operational.

“Charging Energy” means, in respect of the Energy Storage System, for a given period of time, the amount of Energy (in MWh_{DC}) used to charge (or recharge) the Energy Storage System during the period as measured by the Metering Equipment at the Charging Energy Delivery Point.

“Charging Energy Capacity” means the maximum amount of energy, in MWh_{DC}, that the Energy Storage System is capable of being charged (assuming the Energy Storage System is fully discharged).

“Charging Energy Delivery Point” means the electrical point between the Generation Facility or the CAISO Grid, as applicable, and Energy Storage System at which the Charging Energy is measured.

“Claiming Party” means the Party claiming a Force Majeure under Article 18.

“Claims” has the meaning set forth in Section 23.1(a).

“Collateral Assignment Agreement” has the meaning set forth in Section 12.1.

“Commencement of Construction” means the day on which all of the following conditions have been satisfied: (a) Seller has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, other than with respect to Seller, any of those Required Permits that satisfy all of the following: it is not required prior to the start of construction of the Project, it is not subject to the discretionary action of the applicable Governmental Authority, and it otherwise can be obtained in the ordinary course of business; (b) Seller has issued a notification to the EPC Contractor to commence work under the EPC Contract, and the EPC Contractor has acknowledged receipt of such notification (“Notice to Proceed”); and (c) Seller has begun, or cause to begin, as part of a continuous program, either the placement, assembly, or installation of facilities or equipment comprising the Project or the conduct of significant site preparation work on the Site, including clearing excavation necessary for the placement, assembly or installation of facilities or equipment comprising the Project.

“Commercial Operation” means that (a) the construction and installation of the Project has been completed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices, (b) the Project shall have successfully passed all Commercial Operation Tests at a level that demonstrates Contract Capacity of the Generation Facility of at least the Expected Generation Facility Contract Capacity, Contract Capacity of the Energy Storage System of at least the Expected Energy Storage Contract Capacity, and a Tested Round-Trip Efficiency Rate of the Energy Storage System of at least the Guaranteed Round-Trip Efficiency Rate, and complete test reports have been submitted to Buyer, and (c) Seller shall have delivered a true, correct, and complete Commercial Operation Certificate from Seller, the EPC Contractor, and a Licensed Professional Engineer, as set forth in a written Notice from Seller to Buyer specifying the date on which the requirements described in clauses (a) and (b) were satisfied, as confirmed in each case by Buyer and/or Buyer’s engineer, and including such executed Commercial Operation Certificate; *provided*, however, that such confirmation must be made within twenty-one (21) days after receipt of complete test reports from Seller required pursuant to clause (b) and, if not made within such twenty-one (21) day period, shall be deemed to have been given unless Buyer or Buyer’s engineer shall have provided the reasons for why such requirements have not been satisfied within such twenty-one (21) day period; *provided*, further, that upon such confirmation, Commercial Operation shall be deemed to have been achieved as of the date set forth in such Notice from Seller to Buyer.

“Commercial Operation Certificate” means the certificate of Commercial Operation of the Project to be executed by Seller, the EPC Contractor, and a Licensed Professional Engineer in the form of Appendix B.²

“Commercial Operation Test” has the meaning set forth in Section 7.2.

“Compliance Actions” has the meaning set forth in Section 1.5.

“Compliance Deadline” has the meaning set forth in Section 1.5.

² **Note to Draft:** Buyer to provide form of certificate.

“Conditions Precedent” has the meaning set forth in Section 2.4.

“Confidential Information” means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives in violation of this Agreement, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, provided that, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.

“Construction Period Security” has the meaning set forth in Section 11.2.2.

“Contract Capacity” means (a) with respect to the Generation Facility, the full generation capacity of the Generation Facility, and (b) with respect to the Energy Storage System, Charging Capacity and Discharging Capacity of the Energy Storage System, each as determined pursuant to Section 1.1.1.

“Contract Capacity Tests” means the periodic testing of the Contract Capacity of the Energy Storage System pursuant to Section 7.3 and further described in Appendix 7.

“Contract Conditions” means the following ambient (outdoor) temperature ranges: (a) for operation of the Energy Storage System, between []°C and []°C during charging, and between []°C and []°C during a discharging, and (b) during the storage of Energy, between []°C and []°C.

“Contract Quantity” has the meaning set forth in Section 1.1.2(a).

“Contract Year” means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with (a) the first Contract Year commencing on the Initial Delivery Date and ending on the last day of the month that is twelve (12) months after the Initial Delivery Date, and (b) each subsequent Contract Year commencing on the anniversary of the first day of the month following the Initial Delivery Date.

“Costs” means with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations under the Agreement or entering into new arrangements which replace the Product, including any costs or penalties imposed upon the Non-Defaulting Party for the loss of Resource Adequacy Benefits or for replacing those Resource Adequacy Benefits.

“CP Satisfaction Date” means the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the applicable Party(ies) described in Section 2.5.1).

“CPUC” means the California Public Utilities Commission or any successor thereto.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer and all other relief as may be requested by Buyer in its submittal to the CPUC for approval, subject to CPUC review of the Buyer’s administration of the Agreement.

“Credit Rating” means, with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s. If a party has outstanding multiple debt or deposit obligations meeting such criteria and differing ratings have been assigned by a single rating agency to such multiple obligations, the lowest of such ratings shall apply. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by either S&P or Moody’s, then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody’s, as the case may be.

“Cure Period” has the meaning set forth in Section 2.10.1.

“Daily Delay Damages” means liquidated damages paid by Seller to Buyer in the amount of \$[XX,XXX] per day for each day of delay.

“Day-Ahead” has the meaning set forth in the Tariff.

“Day-Ahead Market” has the meaning set forth in the Tariff.

“Day-Ahead Schedule” has the meaning set forth in the Tariff.

“Deemed Delivery Forecast” means either (a) in the case of an Economic Dispatch Down of the type described in clause (a) of the definition of “Economic Dispatch Down”, the VER Forecast amount during such Economic Dispatch Down Period (or if there is no such VER Forecast available during such Economic Dispatch Down Period, the amount of Generation Facility Bundled Green Energy that Seller could reasonably have delivered to Buyer, but was prevented as a result of Economic Dispatch Down as determined by Buyer in a commercially reasonable manner), or (b) in the case of an Economic Dispatch Down of the type described in clause (b) of the definition of “Economic Dispatch Down”, the Real-Time Forecast during such Economic Dispatch Down Period.

“Deemed Generation Facility Bundled Green Energy” means, with respect to the Generation Facility, the amount of Generation Facility Bundled Green Energy that Seller could reasonably have delivered to Buyer at the Energy Delivery Point or to the Project System’s Energy Storage System as Charging Energy, as applicable, but was prevented from so delivering by reason of Economic Dispatch Down during the applicable Economic Dispatch Down Period, the quantity of which shall be equal to (a) the Deemed Delivery Forecast of Energy corresponding to such Economic Dispatch Down period, less (b) any amount of Generation Facility Scheduled Energy

during such Economic Dispatch Down Period, less (c) any amount of Energy that was not delivered during such Economic Dispatch Down Period associated with any concurrent Scheduled Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault but only to the extent the Deemed Delivery Forecast does not already reflect the foregoing amount of Energy; *provided that*, if the applicable amount calculated pursuant to the clause above for Deemed Generation Facility Bundled Green Energy is negative is negative, then such Deemed Generation Facility Bundled Green Energy amount shall be zero (0).

“Default Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the maximum rate permitted by Applicable Law. The Federal Reserve H.15 Statistical Release, Selected Interest Rates (daily) may be found at the following address: www.federalreserve.gov/releases/H15/update.

“Defaulting Party” has the meaning set forth in Section 3.1.

“Delivered Energy” means, in respect of the Project, for a given period of time, the amount of Energy delivered by the Project for Buyer’s account during the period at the Energy Delivery Point for the Project as measured by the Energy Delivery Point Metering Equipment, expressed in MWh_{AC}. Delivered Energy shall be comprised only of Generation Facility Grid Delivered Energy and Energy Storage System Delivered Energy.

“Delivery Excuse” means (i) any Event of Default of Buyer under this Agreement; (ii) the delay or failure by Buyer in performing a material obligation under this Agreement; (iii) the delay or failure of Buyer to deliver Charging Energy or to accept Product as required under this Agreement for whatever reason which failure does not arise in each case as a result of Seller’s non-performance under this Agreement; (iv) the delay or failure by the Participating Transmission Owner in performing a material obligation under any interconnection agreement to which it is a party with Seller, provided Seller assigns to Buyer any claim it may have against the Participating Transmission Owner related to such delay or failure; (v) the delay or failure by the electricity retail service provider in performing a material obligation under any interconnection agreement to which it is a party with Seller, provided Seller assigns to Buyer any claim it may have against the Participating Transmission Owner related to such delay or failure; (vi) any curtailment ordered directly or indirectly from the CAISO (but not including any reduction of deliverable capacity of the Project in accordance with Section 40.4.6.1 or 40.4.2 of the Tariff); and (vii) reductions in Energy Storage Capacity that are consistent with Accepted Electrical Practices that are the result of ambient conditions differing from Contract Conditions.

“Delivery Period” has the meaning set forth in Section 2.8.

“Delivery Period Security” has the meaning set forth in Section 11.2.3.

“Discharging Capacity” means the maximum dependable operating capability of the Energy Storage System, measured in MW_{AC}, to discharge energy from a partially or fully-charged storage device to the CAISO Grid.

“Discharging Energy” means the amount of energy, in MWh_{AC}, that is discharged from the Energy Storage System as measured at the Energy Storage Metering Equipment.

“Discharging Energy Capacity” means the maximum amount of energy, in MWh_{AC}, that is capable of being discharged from the Energy Storage System (assuming the Energy Storage System is Fully Charged).

“Disclosure Order” has the meaning set forth in Section 24.1.1.

“Disclosure Party” has the meaning set forth in Section 24.1.1.

“Dispatch Down Period” means, for the Generation Facility, the period of curtailment of delivery of Product from the Generation Facility resulting from System Dispatch Down or Economic Dispatch Down.

“Dispatch Notice” means the operating instruction, and any subsequent updates (an “Updated Dispatch Notice”), given by Buyer or CAISO to Seller, directing the Generation Facility or the Energy Storage System to deliver Delivered Energy at a specified megawatt output at the Energy Delivery Point or, in the case of an Energy Storage System, receive Charging Energy, in accordance with the procedures set forth in Section 15.3.

“Early Termination Date” has the meaning set forth in Section 3.3.

“Economic Dispatch Down” means curtailment of delivery of Product from the Generation Facility that is the result of any of the following:

(a) Curtailment of the Generation Facility where Buyer either (a) submits (i) a self-schedule of the Generation Facility with a binding Product quantity or (ii) an economic bid in the applicable CAISO market for either the Generation Facility or the Energy Storage System (including in order to charge the Energy Storage System or in order to deliver Ancillary Services from the Energy Storage System), or (b) fails to submit any such schedule or bid for the Generation Facility, for each of (i) and (ii) that when implemented by the CAISO results in an otherwise available Product quantity not scheduled or awarded by the CAISO, except to the extent such curtailment is concurrently the result of a System Dispatch Down, Scheduled Outage, Forced Outage, or Force Majeure, and for the avoidance of doubt Economic Dispatch Down shall include such curtailments that are the result of a Buyer Event of Default or failure by Buyer in performing a material obligation hereunder; or

(b) Curtailment of the Generation Facility resulting from Buyer bidding the delivery of Ancillary Services from the Energy Storage System and, as a result of such Ancillary Services bidding, the Generation Facility receives an order or notification from CAISO to follow the Generation Facility Scheduled Energy but does not otherwise receive a negative SUPP from the CAISO.

“Economic Dispatch Down Period” means the period of time during which there is an Economic Dispatch Down; provided, the duration of any Economic Dispatch Down Period shall be inclusive of the time required for the Generation Facility to ramp down and ramp up.

“Effective Date” is as set forth in the introductory paragraph of this Agreement.

“Efficiency Rate Test” has the meaning as set forth in Section 7.4 and further described in Appendix 7.

“Electric Retail Delivery Point” has the meaning set forth in Section 1.3.2.

“Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.11, *et seq.*, as amended or supplemented from time to time.

“Energy” means, with respect to each Project System, all electrical energy generated by the Generation Facility measured in kWh or MWh, or multiple units thereof. Energy shall include without limitation, Charging Energy, Stored Energy, Delivered Energy, Unit Contingent Energy, Associated Energy, Associated Ancillary Services Energy, Supplemental Energy, reactive power, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” means the point specified in Section 1.3.1.

“Energy Delivery Point Metering Equipment” means, for a Project System, the meters and measuring equipment recognized by the CAISO at the Energy Delivery Point for the Project System, and which measures the Delivered Energy for such Project System delivered to the Energy Delivery Point.

“Energy Storage Capacity” means the Discharging Capacity of an Energy Storage System.

“Energy Storage System” has the meaning set forth in the Recitals.

“Energy Storage System Bundled Green Energy” means, with respect to the Energy Storage System, Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of the Energy Storage System Delivered Energy. The quantity of Energy Storage System Bundled Green Energy shall be equal to the lesser of the quantity of (i) the Energy Storage System Delivered Energy, or (ii) the amount of Renewable Energy Credits that are delivered to Buyer in respect of the Energy Storage System Delivered Energy, unless a change in Applicable Laws occurs after the Effective Date that would, absent further action by Seller, change the methodology for determining the amount of Renewable Energy Credits delivered by the Energy Storage System such that the quantity of such Renewable Energy Credits is reduced as compared to the prior methodology, in which case the quantity of Energy Storage System Bundled Green Energy shall be equal to the Energy Storage System Delivered Energy.

“Energy Storage System Delivered Energy” means, with respect to the Energy Storage System, the portion of the Delivered Energy consisting of, or attributable to, Energy discharged from the Energy Storage System, as measured by the Metering Equipment.

“Energy Storage System Metering Equipment” means, for the Energy Storage System, the meters and measuring equipment recognized by the CAISO which measures the Charging Energy delivered to and Energy discharged from the Energy Storage System.

“Energy Storage System Scheduled Energy” means, for a Project System’s Energy Storage System, the Scheduled Energy for the Energy Storage System.

“Environmental Costs” means costs incurred in connection with the acquiring and maintaining all environmental permits and licenses for the Project, and the Project’s compliance with all applicable environmental laws, rules and regulations, , including without limitation capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and costs associated with the disposal and clean-up of hazardous substances introduced to the site where the Project is located, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

“EPC Contract” means Seller’s engineering, procurement and construction contract with the EPC Contractor, if any.

“EPC Contractor” means the entities chosen by Seller to perform the engineering, procurement and construction activities for the Project, if any.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Equivalent Availability Factor” has the meaning set forth in Appendix 9.2.

“Executive(s)” has the meaning set forth in Section 22.2.1.

“Expected Capacity Attributes” means with respect to any particular day of any Showing Month, the Capacity Attributes (in MWs) for such day of such Showing Month, less any reductions to the amount of Capacity Attributes (in MWs) that must be provided for such day as specified in Appendix 1.1.1.

“Expected Energy Storage Contract Capacity” means the expected Energy Storage Capacity of the Energy Storage System, as measured in megawatts (MW_{AC}) at the location of the Energy Delivery Point, as set forth in Appendix 1.1.1.

“Expected Generation Facility Contract Capacity” means the expected maximum generation capacity of the Generation Facility, as measured in megawatts (MW_{AC}) at the location of the Energy Delivery Point, as set forth in Appendix 1.1.1.

“Expenditure” has the meaning set forth in Section 1.4.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“Flexible Capacity” means with respect to any particular Showing Month of the Delivery Period, the MWs of Product which are eligible to satisfy a load-serving entity’s Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(c) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

- (i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, quarantine ordered by a Governmental Authority in response to disease epidemic, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
- (ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or
- (iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

(d) Force Majeure shall not be based on:

- (i) Buyer’s inability economically to use or resell the Product purchased hereunder;
- (ii) Seller’s ability to sell the Product at a price greater than the price set forth in this Agreement;
- (iii) Seller’s inability to obtain governmental approvals or other approvals of any type for the construction, operation, or maintenance of the Project, except to the extent Seller’s

inability to obtain (or delays in obtaining) approvals is caused by an event of Force Majeure of the specific type described in any of the immediately preceding subsection (a)(i) through (a)(iii) above;

- (iv) Seller's inability to obtain (or delays in obtaining) sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain (or delays in obtaining) sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;
- (v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller's Affiliates, or the Project;
- (vii) any equipment failure except to the extent such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;
- (viii) Seller's inability to obtain or maintain Site Control;
- (ix) Any risks, delays or increased costs arising or resulting from any disease epidemic, other than delays caused by a quarantine or shutdown ordered by a Governmental Authority having jurisdiction in respect to such disease epidemic; or
- (x) Seller's inability to obtain interconnection service under its [Large/Small] Generator Interconnection Agreement for the Project.

“Forced Outage” has the meaning set forth in the Tariff.

“Fully Charged” means the state at which the Stored Energy of the Energy Storage System is equal to the Charging Energy Capacity.

“GAAP” has the meaning set forth in Section 21.2.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to such Party, if any (exclusive of Costs), resulting from the termination and liquidation of the Agreement, determined in a commercially reasonable manner.

“Generation Facility” has the meaning set forth in the Recitals.

“Generation Facility Bundled Green Energy” means, with respect to the Generation Facility, Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of the Generation Facility Delivered Energy. The quantity of Generation Facility Bundled Green Energy shall be equal to the lesser of the quantity of (i) the Generation Facility Delivered Energy, or (ii) the amount of Renewable Energy Credits that are delivered to Buyer in respect of the Generation Facility Delivered Energy (or, if any such Generation Facility Delivered Energy is delivered to the Energy Storage System, the amount of Renewable Energy Credits that would reasonably have been expected to be delivered to Buyer in respect of such Generation Facility Delivered Energy if such Generation Facility Delivered Energy had been delivered to the Energy Delivery Point), unless a change in Applicable Laws occurs after the Effective Date that would, absent further action by Seller, change the methodology for determining the amount of Renewable Energy Credits delivered by the Generation Facility such that the quantity of such Renewable Energy Credits is reduced as compared to the prior methodology, in which case the quantity of Generation Facility Bundled Green Energy shall be equal to the Generation Facility Delivered Energy.

“Generation Facility Delivered Energy” means, with respect to the Generation Facility, (i) Generation Facility Grid Delivered Energy and (ii) any Energy generated by the Generation Facility that is delivered by the Project to the Energy Storage System to be used as Charging Energy for the Energy Storage System, as measured by the Metering Equipment in [MWh_{AC}]³.

“Generation Facility Grid Delivered Energy” means Energy generated by the Generation Facility that is delivered by the Project for Buyer’s account at the Energy Delivery Point as measured by the Energy Delivery Point Metering Equipment, expressed in MWh_{AC}.

“Generation Facility Metering Equipment” means, for the Generation Facility, the meters and measuring equipment recognized by the CAISO which measures the Energy generated by the Generation Facility.

“Generation Facility Scheduled Energy” means, for the Generation Facility, the Scheduled Energy for the Generation Facility.

“Generation Management System” or “GMS” means the automated system employed by Buyer’s real-time operations to remotely monitor and dispatch the Energy Storage System.

“Generation Operations Center” or “GOC” means the location of Buyer’s real time operations personnel.

“GEP Damages” means, with respect to a Performance Measurement Period for which there is a GEP Failure Event, an amount equal to the product of (a) the difference of the Guaranteed Energy Production for such Performance Measurement Period, less the sum of Generation Facility Bundled Energy actually delivered to Buyer during such Performance Measurement Period, plus any deemed amounts set forth in the last sentence of Section 1.1.2(a) during such Performance

³ **NTD:** If the Energy Storage System is DC coupled, then appropriate conversion methodology to be discussed.

Measurement Period, plus GEP Damages Credited Amounts associated with the immediately-prior Performance Measurement Period (in MWh), multiplied by (b) the Energy Price.

“GEP Damages Credited Amount” means, with respect to a Performance Measurement Period for which there is a GEP Failure Event, the amount (in MWh) calculated for clause (a) of the definition of “GEP Damages” for such Performance Measurement Period, but only to the extent that Seller paid GEP Damages associated with such amounts.

“GEP Failure” has the meaning set forth in Section 1.1.2(a)(i). “Governmental Authority” means any federal, state, local, municipal, or other governmental, executive, administrative, judicial or regulatory entity, and the CAISO or any other transmission authority, having or asserting jurisdiction over a Party, the Project or this Agreement.

“Governmental Charges” has the meaning set forth in Section 13.1.

“Green Attributes” means, subject to the limitations in the final sentence of this definition, any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, or any other Renewable Energy Incentives, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

“Guaranteed Energy Production” has the meaning set forth in Section 1.1.2(a).

“Guaranteed Initial Delivery Date” is the date set forth in Section 2.7 for the Project.

“Guaranteed Round-Trip Efficiency Rate” means the guaranteed Round-Trip Efficiency Rate for the Energy Storage System as set forth in Appendix 1.1.1.

“Guarantor” the entity identified as provided in Section 11.3.3.

[“Guaranty Agreement” means, if a Guarantor has been identified as provided in Section 11.3.3, the guaranty agreement from the Guarantor in a form reasonably acceptable to Buyer.]⁴

“Hour-Ahead” has the meaning set forth in the Tariff.

“Hour-Ahead Schedule” has the meaning set forth in the Tariff.

“Imbalance Energy” means, with respect to the Energy Storage System or Generation Facility, the amount of Energy, in any given settlement interval, by which the amount of Energy Storage System Delivered Energy or Generation Facility Grid Delivered Energy (as applicable) deviates from the amount of Energy Storage System Scheduled Energy or Generation Facility Scheduled Energy (as applicable).

“Industry Standards” has the meaning set forth in Section 8.1.1.

“Inflexible Capacity” means with respect to any particular Showing Month of the Delivery Period, the MWs of the Product which are not eligible to satisfy a load-serving entity’s Flexible RAR.

“Initial Delivery Date” has the meaning set forth in Section 2.8.

“Initial Negotiation End Date” has the meaning set forth in Section 22.2.1.

“Interconnection Facilities” means all apparatus installed to interconnect the Project to the Participating Transmission Owner’s or other utility owned or managed electric system or to the CAISO Grid to make available to Buyer the Contract Capacity, Associated Energy, and Resource Adequacy Benefits, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner’s electric system (or other system to which the Participating Transmission Owner’s electric system is connected, including the CAISO Grid) and Buyer’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner’s electric system or on the systems of others to which the Participating Transmission Owner’s electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner’s electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (prime, 3 months) be

⁴ **Note to Draft:** Buyer to provide form.

discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“[Large/Small] Generator Interconnection Agreement” means a [large/small] generator interconnection agreement entered into with the Transmission Provider.

“Lender” means any bank, financial institution or other entity (or any agent thereof) that provides development, bridge, construction, permanent debt, tax equity or other financing or refinancing for the Project to Seller consistent with Section 12.1 (subject to the Collateral Assignment Agreement, if applicable).

“Letter of Credit” means an irrevocable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Appendix 11.3 and reasonably acceptable to Buyer.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

“Local RAR” means, for Projects providing Capacity Attributes, the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Losses” means with respect to either Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination and liquidation of the Agreement, determined in a commercially reasonable manner.

“Manager” has the meaning set forth in Section 22.2.1.

“Maximum Energy Capacity” means, any given time, the lesser of the Energy Storage System’s Charging Energy Capacity or Discharging Energy Capacity.

“Maximum Force Majeure Delay” has the meaning set forth in Section 2.10.2.

“Maximum RA Capacity” means the maximum amount of Resource Adequacy capacity available from the Project operating within its Operating Restrictions and specifications as set forth in Appendix 1.1 and Appendix 1.2.2. **[As of the Effective Date, such Maximum RA Capacity is the maximum capacity that the Project can achieve in a four (4)-hour period based on its**

Contract Capacity.] If the CAISO changes its methodology for determining the maximum amount of capacity available from a storage resource to provide a Resource Adequacy capacity, a new Maximum RA Capacity shall be determined for the Project based on the new CAISO methodology and the Operating Restrictions and such specifications of the Project.

“Meter Service Agreement” or “MSA” has the meaning set forth in the Tariff.

“Metering Equipment” means, as applicable, the Generation Facility Metering Equipment, the Energy Storage System Metering Equipment, and the Energy Delivery Point Metering Equipment.

“Milestone Extension Date” has the meaning set forth in Section 6.2.1.

“Milestone Schedule” means the schedule in the form of Appendix 6.1(a), setting forth Seller’s development, design, procurement, construction, commissioning and testing milestones, as set forth in Section 6.1.

“Minimum Operating Level” means the minimum operating level of the Energy Storage System.

“Monthly Capacity Payment” has the meaning set forth in Section 9.2.

“Monthly Delivery Forecast” has the meaning set forth in Section 15.3.3.

“Monthly Energy Payment” has the meaning set forth in Section 9.3.

“Monthly Progress Report” means a monthly progress report, sent by Seller to Buyer no later than the tenth day of each month while the Project has not yet met its Initial Delivery Date, and within five (5) days of Buyer’s request, substantially in the form set forth in Appendix 6.1(b) and describing Seller’s compliance with the Milestone Schedule, including projected time to complete any milestones, for the Project, as set forth in Section 6.1.

“Monthly Supply Plan” has the meaning set forth in the Tariff.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MW” means mega-watt or mega-watts.

“Negative Imbalance Energy” has the meaning set forth in Section 14.4.1.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC Holidays” means “Additional Off-peak Days” as defined by NERC on the NERC website at <http://www.nerc.com>.

“Non-Availability Charges” shall mean Non-Availability Charges as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 3.3.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile, or electronic messaging (e-mail) in accordance with this Agreement.

“Operating Procedures” has the meaning set forth in Section 15.11.

“Operating Restrictions” means limitations on Buyer’s ability to schedule and use Contract Capacity, Ancillary Services, and Energy that are identified in Appendix 1.1 to this Agreement.

“Outage Schedule” has the meaning set forth in Section 17.1.1.

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Intermittent Resource” has the meaning set forth in the Tariff.

“Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected [or the owner of the distribution system to which the Project is interconnected]. As of the Effective Date, the Participating Transmission Owner is [San Diego Gas & Electric Company.] **[NOTE to Bidders: to be modified if project is not connected directly to SDG&E’s service territory.]**

“Performance Assurance” means collateral in the form of cash, Letter of Credit, Guaranty Agreement or other security acceptable to Buyer in its sole discretion required to be provided to Buyer under Section 11.2.

“Performance Measurement Period” has the meaning set forth in Section 1.1.2(a).

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities (including but not limited to, limitations on any pollutant emissions levels, limitations on operational levels or operational time, and limitations on any specified operating constraint) or any other operational restriction or specification related to compliance with any laws or regulations applicable to the Project.

“Permitted Liens” means liens and encumbrances (a) imposed by the Priority Security Interest (including pursuant to any Security Document) or (b) imposed by any Lender.

“Person” means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“PMAX” means the applicable CAISO-certified maximum operating level (in MW) of the Energy Storage System.

“PMIN” means the applicable CAISO-certified minimum operating level (in MW) of the Energy Storage System.

“Pnode” means the Pricing Node as set forth in the Tariff.

“Positive Imbalance Energy” has the meaning set forth in Section 14.4.1.

“Pre-Construction Security” has the meaning set forth in Section 11.2.1.

“Priority Security Interest” has the meaning set forth in Section 11.4.

“Product” means the capacity, Capacity Attributes, Energy (including Bundled Green Energy), Green Attributes, Ancillary Services, and Resource Adequacy Benefits of the Project and all other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project in accordance with the terms hereof.

“Project” has the meaning set forth in the Recitals.

“Project System” means the Generation Facility or the Energy Storage System, as applicable, as further described in Appendix 1.2.2.

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreements for the Project.

“Qualified Assignee” means any community choice aggregation entity or joint powers authority formed in the State of California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity.

“Qualified Flexible RA Capacity” means, with respect to any month of the Delivery Period, the number of MWs of Contract Capacity that are eligible, certified (if required), and counted to satisfy flexible capacity requirements established for load-serving entities or other persons by the CPUC, the CAISO, or by any other Governmental Authority having jurisdiction.

“Qualified RA Capacity” means, with respect to any month of the Delivery Period, the number of MWs of Contract Capacity that are eligible, certified (if required), and counted to satisfy Resource Adequacy capacity requirements established for load-serving entities or other persons by the CPUC, the CAISO, or by any other Governmental Authority having jurisdiction.

“RA Compliance Obligations” means RAR, Local RAR and Flexible RAR.

“RA Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“Ramp Rate” means the ability of the Energy Storage System to change between power output levels, expressed in MW_{AC}/min.

“Real-Time Forecast” means the total amount of energy that the Generation Facility would have produced during an Economic Dispatch Down Period, as calculated by Seller using the best available data obtained through commercially reasonable methods and meteorological data at the Generation Facility during an Economic Dispatch Down Period, and any adjustments necessary to accurately reflect the Generation Facility’s capacity to produce and deliver energy to the Energy Delivery Point, including applicable losses and manufacturers’ warranted power curves, subject to Buyer’s audit and approval not to be unreasonably withheld.

“Recovery Plan” has the meaning set forth in Section 6.2.1.

“Referral Date” has the meaning set forth in Section 22.2.1.

“Reliability Must-Run Contract” or “RMR Contract” means a Must-Run Service Agreement between the owner of an RMR Unit (as defined in the Tariff) (or the output therefrom) and the CAISO.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the production of electricity from, or the construction, operation or the ownership of, the Project or any part thereof (including the Tax Credits and other credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits associated with the production of electricity from, or the construction, operation or the ownership of, the Project, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive available from a Governmental Authority that is associated with the production of electricity from, or the construction, operation or the ownership of, the Project; provided that Renewable Energy Incentives shall not include Renewable Energy Credits, Green Attributes, or Capacity Attributes.

“Representatives” means the officers, directors, members, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents or representatives of a Party or of its Affiliates and in the case of Buyer, includes any Independent Evaluator (as such term is used in CPUC Decision 04-12-048) used by Buyer in connection with the Request for Offers from which this Agreement arose.

“Required Permits” has the meaning set forth in Section 5.1(b).

“Resource Adequacy” has the meaning set forth in the Resource Adequacy Rulings.

“Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations (including without limitation those

related to flexible resource adequacy), as those obligations are set forth in any Resource Adequacy Rulings.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Rulings” means CPUC Decisions D.04-10-035, D.05-10-042 and D.06-06-0064 and CPUC Resource Adequacy Rulemakings (R.)04-04-003 and (R.)05-12-013 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority (including without limitation those related to flexible resource adequacy), as such Decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

“Resource ID” has the meaning set forth in the Tariff.

“Retail Electricity Provider” means the provider of retail electricity to the Project at the Electric Retail Delivery Point. On the Effective Date, the Retail Electricity Provider is [San Diego Gas & Electric Company]. **[NOTE to Bidders: to be modified if project receives retail electricity from another provider.]**

“Round-Trip Efficiency Rate” means the efficiency of the Energy Storage System in recovering Charging Energy from the Energy Storage System, as measured at the Charging Energy Delivery Point to the Energy Delivery Point (based on AC-to-AC efficiency), and expressed as a percentage, rounded to two decimal places (e.g., 85.45%).

“Round-Trip Efficiency Rate Factor” has the meaning set forth in Appendix 9.2.

“S&P” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Sales Price” means (i) the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner, resells any Product not Scheduled and received by Buyer, deducting from such proceeds any (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO to Schedule and deliver the Product into the CAISO System, and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or (ii) absent a sale despite commercially reasonable efforts to resell the Product, zero. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer’s failure to take Product and calculated in dollars per megawatt hour; *provided*, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. The Sales Price may be less than zero.

“Schedule” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of

notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified delivery point.

“Scheduled Energy” means the Energy from the CAISO Grid expected to be delivered to the Energy Delivery Point for charging the Energy Storage System, or the Energy discharged from the Energy Storage System or generated by a Generation Facility, as applicable, in either case that is expected to be delivered to the Energy Delivery Point, in each case pursuant to (a) the latest Dispatch Notice, or (b) any CAISO instructions, including without limitation pursuant to (i) Supplemental Energy bids, (ii) a Reliability Must-Run Contract (as defined in the Tariff) between the CAISO and the Seller, (iii) any Waiver Denial Periods, or (iv) Ancillary Services exercised.

“Scheduled Outage” means a period during which the Project is either in whole or in part not capable of generating, charging, storing Energy or discharging Energy (as applicable) due to planned maintenance or repair that has been scheduled in advance in accordance with Section 17.1.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article 14.

“SEC” means the Securities and Exchange Commission.

“Security Documents” means those agreements, documents, instruments, or certifications in a form reasonably acceptable to Buyer that grant and perfect Buyer’s Priority Security Interest.

“Seller” has the meaning set forth in the introductory paragraph hereto.

“Seller Cost Test” means any test requested or required to be undertaken by Buyer hereunder.

“Seller Initiated Test” has the meaning set forth in Section 7.5.

“Settlement Amount” means, with respect to the Non-Defaulting Party, the amount of Losses and Costs, net of Gains, expressed in U.S. Dollars, incurred by the Non-Defaulting Party as a result of the liquidation of the Agreement pursuant to Section 3.4.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the Tariff.

“Site” has the meaning set forth in the Recitals.

“Site Control” means that Seller owns the Site and the Project or has demonstrable contractual rights to, or is the managing general partner of any partnership (or comparable manager of any other person) who owns or has demonstrable contractual rights to, with explicit authority to act in all matters relating to, the control and operation of, the Site and the Project in order to perform its obligations under this Agreement.

“State of Energy” means the amount of Stored Energy in an Energy Storage System in real time, expressed as a percent of Maximum Energy Capacity (e.g., 95% SOE).

“Station Use” means Energy that is used to operate the Project’s auxiliary equipment. The auxiliary equipment includes, but is not limited, to air conditioning or other cooling units, plant lighting and control systems.

“Stored Energy” means the amount of Energy stored in the Energy Storage System at any given time, in kWh_{DC}, as indicated by Seller’s Stored Energy Measuring Device.

“Stored Energy Measuring Device” means, for the Energy Storage System, the measuring equipment for the Energy Storage System which provides the Stored Energy amount, Maximum Energy Capacity and State of Energy of the Energy Storage System in real-time, as specified in Appendix 1.2.2.

“Supplemental Energy” is the Energy from the Project which has uncommitted capacity following finalization of the Hour-Ahead Schedules and which Energy shall be available to CAISO during the Real Time Market (as defined in the Tariff).

“Supply Plan” has the meaning set forth in the Tariff.

“System Dispatch Down” means curtailment of delivery of Product from the Generation Facility or Energy Storage System resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, an Exceptional Dispatch (as defined in the Tariff), any system emergency as defined in the Tariff (“System Emergency”), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO’s or Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected, any warning, forecast, or anticipated overgeneration conditions, including a request from CAISO to manage over-generation conditions; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner’s transmission facilities or distribution operator’s facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Energy Delivery Point, (d) curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator; or (e) in the case of an Energy Storage System, curtailment ordered by Buyer pursuant to a Dispatch Notice; *provided*, however, that, for purpose of this definition, System Dispatch Down for a Generation Facility shall not include Economic Dispatch Down of the Generation Facility.

“System Emergency” has the meaning set forth in the Tariff.

“System Response Time” means the amount of time for the Energy Storage System to change from an off-line state to the maximum discharge rate for the Energy Storage System and the amount of time for the Energy Storage System to change from an off-line state to discharging at the maximum discharge rate.

“Tariff” means the tariff and protocol provisions, as amended or supplemented from time to time, of the CAISO.

“Tax Credits” means the PTC, ITC, and any other state, local or federal production or other tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production, sale or storage of renewable energy from, or the operation or the ownership of, the Project or any part thereof.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 3.4.

“Tested Round-Trip Efficiency Rate” means the Round-Trip Efficiency Rate of the Project determined as of the Initial Delivery Date by the Commercial Operation Test as set forth in Section 7.2 and Appendix 7 and thereafter pursuant to the Efficiency Rate Tests as set forth in Section 7.4 and Appendix 7.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Energy Delivery Point.

“Uninstructed Deviation Penalty” has the meaning set forth in the Tariff.

“Uninstructed Imbalance Energy” has the meaning set forth in the Tariff.

“Unit Contingent Energy” means Energy delivered by the Energy Storage System that is dependent upon the availability and operation of that Energy Storage System.

“Unscheduled Outage” means a period during which the Energy Storage System is not capable of providing service due to the need to maintain or repair a component thereof, which period has not been scheduled in advance in accordance with Section 17.1.

“VER Forecast” means the forecast of the Energy to be produced by the Generation Facility prepared by the CAISO or its agent in accordance with the VER Forecasting Program and communicated to the Scheduling Coordinator, which forecast is the last such forecast prepared by the CAISO that does not reflect curtailed production as a result of Economic Dispatch Down periods. As of the Effective Date, such VER Forecast is the CAISO forecast generated through its Resource Specific VER Forecast Usage Report.

“VER Forecasting Program” has the meaning set forth in the Tariff.

“Waiver Denial Periods” has the meaning set forth in the Tariff.

“WECC” means the Western Electricity Coordinating Council, or any successor thereto.

APPENDIX B

COMMERCIAL OPERATION CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("Engineer") to San Diego Gas & Electric Company ("Buyer") in accordance with the terms of that certain Renewable Energy and Storage Power Purchase Agreement dated _____ ("Agreement") by and between Owner and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of date below, Engineer hereby certifies and represents to Buyer the following:

1. We have read the Agreement, and we understand the requirements for Commercial Operation under the Agreement.
2. We have reviewed the material and data made available to us by the Owner.
3. We have reviewed all governmental approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.
4. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that the following have been met:
 - (a) Except for punch list items that would not materially affect the performance, reliability or safe operation of the Project, the construction and installation of the Project has been completed in accordance with the specifications set forth in Appendix 1.2.1 of the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices;
 - (b) Each of the Generation Facility and the Energy Storage System has successfully passed all performance tests;
 - (c) The Energy Storage System has successfully passed all Commercial Operation Tests at a level that demonstrates Contract Capacity of at least the Expected Energy Storage System Contract Capacity and a Tested Round-Trip Efficiency Rate of at least the Guaranteed Round-Trip Efficiency Rate;
 - (d) Authorization to parallel the Project with the CAISO Grid has been obtained;

- (e) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate on _____[DATE]_____];
- (f) The CAISO has provided notification supporting Commercial Operation (which for avoidance of doubt does not need to include CAISO Ancillary Services Certification), in accordance with the CAISO Tariff on _____[DATE]_____;
- (g) The interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Project to be received at the Energy Delivery Point;
- (h) Owner has obtained all governmental approvals (including all Required Permits) necessary for the continuous commercial operation of the Project and the Project is in compliance with all such governmental approvals, Required Permits and all other Applicable Laws; and
- (i) The Generation Facility has a Contract Capacity of [] MW_{AC} and the Energy Storage System has a Contract Capacity of [] MW_{AC} and a Tested Round-Trip Efficiency Rate of []%.

EXECUTED this _____ day of _____, 20__.

Engineer

[_____] ,
a [_____]

By: _____
Name: _____
Title: _____

APPENDIX 1.1

OPERATING RESTRICTIONS⁵

Commented [CJME1]: Do we want anything here?

[To be inserted by the Parties]

Maximum Annual Delivered Energy Amount.

Buyer shall not dispatch the Project to discharge in excess of [] kWh_{AC} in Delivered Energy per calendar year of the Delivery Period (which amount shall be prorated for partial calendar years) (the “Maximum Annual Delivered Energy Amount”); provided that the Parties acknowledge that CAISO may dispatch the Project even after such Maximum Annual Delivered Energy amount has been reached.

⁵

Note to Draft:

APPENDIX 1.1.1

CONTRACT CAPACITY, ROUND TRIP EFFICIENCY AND EXPECTED CAPACITY ATTRIBUTES⁶

Expected Generation Facility Contract Capacity: ____ MW_{AC}

Expected Energy Storage Contract Capacity: ____ MW_{AC}

Guaranteed Round-Trip Efficiency Rate = _____.00%

Expected Capacity Attributes: _____ MW_{AC}

⁶

Note to Draft:

APPENDIX 1.2.2
PROJECT DESCRIPTION⁷

Project Physical Address: _____

Project Latitude and Longitude: _____

Project Site: See map below

Technology Type: _____

Description of Energy Storage System: [Description of building block and components, battery management system, e.g.]

Description of Stored Energy Measuring Device: [Description of how the Stored Energy amount will be measured, including which methodology (e.g. voltage or other) used to calculate Stored Energy]

Description of Generation Tie-Lines/Interconnection Facilities: _____

Shared Facilities: _____

Ramp Rate Guarantee: > ____ MW/min

System Response Time Guarantee: < ____ seconds

Map:

⁷ **Note to Draft:**

APPENDIX 1.3.1

ENERGY DELIVERY POINT

Single-line diagram depicting Energy Delivery Point

APPENDIX 1.3.2

ELECTRIC RETAIL DELIVERY POINT

To be inserted by the Parties pursuant to Section 1.3.2, if applicable.

APPENDIX 6.1(a)
MILESTONE SCHEDULE⁸

Milestone	Milestone Date
File application(s) for Required Permit(s)	
Receipt of Required Permit(s)	
Execution of [Large/Small] Generator Interconnection Agreement	
Site readiness for construction (including receipt of all zoning approvals, easements, rights of way, utility access)	
Commencement of Construction Activities*	
Synchronization of the Energy Storage System to CAISO Grid	
Submittal of all operational documentation including successful acceptance testing and approved test report	
Completion of system commissioning and pre-operational testing	
Achievement of Initial Delivery Date*	

*Critical items subject to Daily Delay Damages if not achieved by above dates (as may be extended pursuant to Section 6.1 of the Agreement).

⁸ **Note to Draft:** Under Buyer review.

APPENDIX 6.1(b)
MONTHLY PROGRESS REPORT⁹

Monthly Progress Report
of
[INSERT SELLER'S NAME]
provided to
San Diego Gas & Electric Company

[Date]

⁹ **Note to Draft:** Under Buyer review.

Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Energy Storage Power Purchase Agreement by and between [insert Seller's name] (Seller) and San Diego Gas & Electric Company (Buyer) dated [_____, 200_] (the "Agreement").

Seller shall review the status of each significant element of the Milestone Schedule and Seller shall identify such matters referenced in clauses (i)-(iii) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Project or the Milestone Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that conditions precedent and the milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Permit Requirement, or compliance therewith, with respect to which there is a dispute over the interpretation of a law or regulation, any organized public opposition to the granting of a necessary Permit Requirement, or any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, in each case which in Seller's reasonable opinion could reasonably be expected to materially threaten or prevent achieving Commercial Operation of the Energy Storage System by the Initial Delivery Date;

(ii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to achieve Commercial Operation of the Energy Storage System by the Initial Delivery Date;

(iii) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form Monthly Progress Report to Buyer, together with all attachments and exhibits.

Major activities to be performed for each aspect of the Project during the current calendar month.

Please provide a brief summary of the Major¹⁰ activities to be performed for each of the following aspects of the Project during the current calendar month:

¹⁰ For Purposes of this Report, "Major" shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller's inability to achieve a Milestone Date.

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Major activities scheduled to be performed in the previous calendar month but not completed as scheduled.

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar month and their status, including those activities that were not completed as scheduled:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Overall assessment of the Project status.

Please provide a brief summary of your assessment of the status and progress of each of the following aspects of the Project:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Exhibit 1: Progress Curve.

The progress curve which shows the progress achieved on the construction of the Project through the current month against the current Monthly Progress Report is included herewith as Exhibit 1.

Exhibit 2: Photos.

The photos included with this Exhibit 2 indicate construction progress to-date at the Project site.

Safety and Health Reports

Any work stoppage from the previous calendar month:

Work stoppage impact on construction of the Project:

I, _____, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in the attached _____'s Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX 7
TESTING PROTOCOLS

**COMMERCIAL OPERATION,
CONTRACT CAPACITY TESTS, and
EFFICIENCY RATE TESTS¹¹**

This Appendix 7 sets forth the protocols for (i) the Commercial Operation Test that the Project must successfully complete in order to achieve Commercial Operation and which sets the level of Contract Capacity and Tested Round-Trip Efficiency Rate for the Project at the start of the Delivery Period, (ii) the Contract Capacity Test, and (iii) the Efficiency Rate Test, and (iv) other Project tests required by CAISO, CPUC or any other Governmental Authority having jurisdiction (“Other Required Tests”). The Commercial Operation Test, the Contract Capacity Test and the Efficiency Rate Tests are sometimes referred to in this Appendix individually as a “Test” and together as the “Tests.”

PART I. GENERAL.

- A. Test Performance. Each Test will be conducted consistent with Accepted Electrical Practices, Contract Conditions, Applicable Law, manufacturer recommendations, and the provisions of published test procedures developed by the Electric Power Research Institute (EPRI) Energy Storage Integration Council (ESIC) (or equivalent test procedures accepted as an Industry Standard for lithium ion battery energy storage systems). At all times during a Test, the Project shall not be operated with abnormal operating conditions such as unstable load conditions. If conditions occur during a Test that are contrary to any of the foregoing, Buyer may postpone or reschedule all or part of such Test in its reasonable discretion, in which case such Test shall be deemed an Incomplete Test.
- B. Final Test Plan. All Tests shall be conducted in accordance with the Final Test Plan for such Test, provided that such Final Test Plan is consistent with the requirements of Part I.A above.
- C. Test Records. Seller shall provide all records associated with a Test (including the conditions, inputs, assumptions, data and results) no later than four (4) Business Days following completion of a Test.
- D. Incomplete Test. If any Test is not completed in accordance herewith, such Test shall be deemed an “Incomplete Test”, and Buyer may in its sole discretion: (i) accept the Test results up to the time the Test stopped (other than in the case such Test is the Commercial Operation Test); (ii) require that the portion of the Test

¹¹ **Note to Draft:**

not completed, be completed within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Unless the reason a Test is an Incomplete Test, any repeat or re-starting of a Test that is a Buyer Cost Test shall cause such Test to be a Seller Cost Test instead.

E. Final Report. Within fifteen (15) Business Days after the completion of a Test (including a retest of a Test), Seller shall prepare and submit to Buyer a written report of the Test (or retest). At a minimum, the report shall include:

- (1) a description of the Final Test Plan for the Test;
- (2) a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;
- (3) a record of Test conditions and assumptions, including any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
- (4) the measured applicable Test data; and
- (5) Seller's statement of either Seller's acceptance of the Test or Seller's rejection of the Test results and reason(s) therefore.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the Test results or Buyer's rejection of the Test and reason(s) therefore. If Buyer reasonably rejects the results of any Test, such Test shall be repeated (and if such Test is a Buyer Cost Test, then such retest shall be a Seller Cost Test).

F. Buyer Representative. Buyer shall be entitled to have its representatives and any independent third party witness present to witness each Test and shall be allowed unrestricted access to the area from where the Project is being controlled (e.g., Project control room), and unrestricted access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to the representative and the third party, if any.

PART II. COMMERCIAL OPERATION TEST.

A. Test Elements. The Commercial Operation Test required pursuant to Section 7.2 shall consist of the following tests:

1. Contract Capacity Test;
2. Efficiency Rate Test; and

3. Other tests required to confirm compliance with the Project's specifications in Appendix 1.2.2 ("Initial Compliance Tests").

- B. Test Plan. No less than sixty (60) days prior to the Initial Delivery Date, Seller shall prepare and submit to Buyer a proposed procedure and schedule in order to complete the Commercial Operation Test ("Seller's Proposed Test Plan"). Such Seller's Proposed Test Plan must describe, with supporting detail, the actions, processes, protocols, and schedules to comply with all of the requirements of each individual test as set forth in this Appendix. Within ten (10) Business Days after Buyer's receipt of Seller's Proposed Test Plan, Buyer shall notify Seller that (i) the Seller's Proposed Test Plan is accepted, and is now considered the Final Test Plan, or (ii) the Seller's Proposed Test Plan is not accepted. If Buyer does not accept Seller's Proposed Test Plan, then Buyer and Seller shall immediately commence work in good faith to finalize such Test procedures and schedules ("Final Test Plan"). If, after thirty (30) days from Buyer's receipt of Seller's Proposed Test Plan, Seller and Buyer have not agreed on a Final Test Plan, Buyer shall provide Seller with the Final Test Plan within seven (7) Business Days after the expiration of the thirty (30) day period. Failure by Buyer to provide Seller with written acceptance of any Seller's Proposed Test Plan shall not constitute acceptance of such Seller's Proposed Test Plan.
- C. Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the Commercial Operation Test. Instrumentation shall include all instruments permanently installed at the Project and the temporary instruments suggested by Seller or deemed necessary by Buyer in its sole judgement. Within thirty (30) days of Buyer's receipt of Seller's Proposed Test Plan, Buyer shall provide Seller with written notice of the temporary calibrated instrumentation deemed necessary by Buyer that will be used during the Commercial Operation Test. Wherever possible, the instrumentation, metering and data collection equipment that will be used after the Project achieves the Initial Delivery Date for monitoring and controlling the operation of the Project shall be used for the Commercial Operation Test. Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the Commercial Operation Test. All electrical metering equipment shall utilize the Project's installed CAISO metering equipment calibrated to CAISO standards. Copies of all calibration sheets shall be provided to Buyer at least five (5) Business Days prior to the Commercial Operation Test.

PART III. INITIAL COMPLIANCE TEST.

- A. Test Plan. The Final Test Plan from the Commercial Operation Test for the Initial Compliance Test shall be used for the Initial Compliance Test, unless the Parties agree otherwise in writing.
- B. Test Elements. The Initial Compliance Tests shall include the following test elements (unless Buyer otherwise agrees in writing in its sole discretion):

1. Measurement of Ramp Rates at six (6) different starting and ending points; and
 2. Measurement of System Response Times from an off-line state to the maximum charging rate of the Energy Storage System and from an off-line state to the maximum discharging rate of the Energy Storage System.
- C. Test Showing. For satisfactory completion of the Initial Compliance Tests, Seller must demonstrate to Buyer's reasonable satisfaction, that the Energy Storage System has met the guaranteed Ramp Rate and System Response Times set forth in Appendix 1.2.2.

PART IV. CONTRACT CAPACITY TEST

- A. Test Plan. The Final Test Plan from the Commercial Operation Test for the Contract Capacity Test shall be used for the Contract Capacity Test, unless the Parties agree otherwise in writing.
- B. Test Measurements. The Contract Capacity Tests shall be performed consistent with and in accordance with the requirements set forth by the CPUC and the CAISO at the time of such test for determining the portion of the Energy Storage System's Capacity that is eligible and can be counted to satisfy Resource Adequacy capacity requirements established for load-serving entities by the CAISO (unless otherwise set forth in this Agreement or this Appendix or as agreed to by Buyer in writing in its sole discretion). The Contract Capacity Tests shall include the following test measurements (unless Buyer otherwise agrees in writing in its sole discretion):
1. Measurement of the Project's maximum Charging Capacity from 0% State of Energy to the earlier of 100% State of Energy or maximum State of Energy at which the BMS begins to limit charging capacity. Charging Capacity shall be calculated by dividing total Charging Energy by the duration for this charging portion of the Contract Capacity Test.
 2. Measurement of the Project's maximum Discharging Capacity over four (4) continuous hours of discharging from 100% State of Energy to the earlier of 0% State of Energy or the minimum State of Energy at which the BMS begins to derate Discharging Capacity. Discharging Capacity shall be calculated as dividing the total Discharging Energy during this discharging portion of the Contract Capacity Test by 4 hours.
- C. Capacity Calculation. The Contract Capacity of the Project shall be the lesser of the Project's Charging Capacity or Discharging Capacity measured pursuant to Part IV.B. above.

PART V. EFFICIENCY RATE TESTS

- A. Test Plan. The Final Test Plan from the Commercial Operation Test shall be used for the Efficiency Rate Test, unless the Parties agree otherwise in writing.
- B. Test Elements. The Efficiency Rate Tests shall be conducted as follows (unless Buyer otherwise agrees in writing in its sole discretion):
1. At the start of the Efficiency Rate Test, the Stored Energy of the Energy Storage System shall be reduced to an amount equal or less than [20%] State of Energy, which Stored Energy amount ("Stored Energy_{test,0}") shall be recorded.
 2. The Project shall be charged with Charging Energy to bring the Stored Energy of the Energy Storage System to at least [80%] State of Energy, at the then-applicable Contract Capacity, which Charging Energy amount ("Charging Energy_{test}") and Stored Energy amount at the end of such charging ("Stored Energy_{test,1}") shall be recorded.
 3. Following the expiration of up to 24 hours after the end of such charging, the Scheduling Coordinator for the Project shall schedule the Project for discharging, at the Contract Capacity in an amount equal to the product of Charging Energy_{test} multiplied by the Guaranteed Round-Trip Efficiency Rate. The Delivered Amount at the end of such discharging ("Delivered Energy_{test}") and the Stored Energy amount at the end of such discharging ("Stored Energy_{test,2}") shall be recorded.
 4. The Tested Round-Trip Efficiency Rate (TRTER) shall be calculated as follows:

$$\text{TRTER} = \left(\frac{\text{Stored Energy}_{\text{test},1} - \text{Stored Energy}_{\text{test},0}}{\text{Charging Energy}_{\text{test}}} \right) \times \left(\frac{\text{Delivered Energy}_{\text{test}}}{\text{Stored Energy}_{\text{test},1} - \text{Stored Energy}_{\text{test},2}} \right) \times 100\%$$

APPENDIX 9.2

MONTHLY CAPACITY PAYMENT¹²

The Monthly Capacity Payment for each month of the Delivery Period shall be equal to the sum of the Monthly Capacity Payment for each Project System, as determined as follows:

$$MCP_m = CC_m \times CR \times SF_m \times EAF_m \times RTERF_m$$

Where:

MCP_m is the Monthly Capacity Payment for a Project System expressed in Dollars for month m of the Delivery Period. If month m is less than a full calendar month, then the Monthly Capacity Payment for a Project System for such month shall be prorated based on the number of days of the Delivery Period during such month.

CC_m is the Contract Capacity of the Energy Storage System in effect during month m , expressed in kW_{AC}, rounded to the nearest 100 kW_{AC}. If the Contract Capacity of the Energy Storage System changes during such month, then the Monthly Capacity Payment of the Energy Storage System for such month shall be prorated based on the applicable Contract Capacity of the Energy Storage System before such change and the applicable Contract Capacity of the Energy Storage System from and after such change.

CR is the Capacity Rate expressed in Dollars per kW_{AC}-year,

$$CR = \$[XXX]/\text{kW}_{AC}\text{-year}$$

SF_m is the Monthly Shaping Factor for the applicable month m , as set forth in the following table:

Month	Monthly Shaping Factor (%)
January	6.7
February	5.0
March	5.0
April	5.8
May	6.3
June	8.3
July	15.8
August	17.5
September	11.7
October	5.8

¹² **Note to Draft:** Under Buyer review.

Month	Monthly Shaping Factor (%)
November	5.8
December	6.3

Notwithstanding the foregoing, Buyer may modify the Monthly Shaping Factors by providing Notice to Seller of its modifications no later than ninety (90) days prior to the start of the next Contract Year; *provided*, however, the sum of the twelve (12) Monthly Shaping Factors in any Contract Year must equal one hundred percent (100%); *provided* further Buyer's right to modify the Monthly Shaping Factor shall not apply to the final Contract Year.

EAF_m or the "Equivalent Availability Factor" of the Energy Storage System for month m is the equivalent availability factor computed as follows:

$$EAF_m = \sum_i^p \frac{Availability_i}{p}$$

Where:

p is the number of hours in month m .

i is the hour in month m .

$Availability_i$ is the lesser of the following, for hour i :

- (a) the quotient of (i) the sum of (A) the lesser of the Charging Capacity (unless the Energy Storage System is Fully Charged during such hour) or Discharging Capacity (unless the Energy Storage System is Fully Discharged during such hour) of the Energy Storage System applicable for such hour, plus (B) the amount that such lesser amount determined in clause (A) is unavailable as a result of Delivery Excuse, divided by (ii) the Contract Capacity of the Energy Storage System applicable for such hour; or
- (b) if the Energy Storage System has been assigned a Qualified RA Capacity or Qualified Flexible RA Capacity, the quotient of (i) the sum of (A) the lesser of the Qualified RA Capacity (if available) or the Qualified Flexible RA Capacity (if available) of the Energy Storage System applicable for such Settlement Interval, plus (B) the amount that such lesser amount determined in clause (A) is unavailable as a result of Delivery Excuse, divided by (ii) the Maximum RA Capacity associated with the Contract Capacity of the Energy Storage System for the month;

provided, however, that (a) if either the Charging Capacity or Discharging Capacity used in clause (A) above used for hour i exceeds the Contract Capacity applicable for such hour, then such Charging Capacity or

Discharging Capacity, as applicable, shall equal the Contract Capacity for such hour, and (b) Availability shall in no event exceed 1.00 for any hour.

$RTERF_m$ or the “Round-Trip Efficiency Rate Factor” of the Energy Storage System for month m shall be computed as follows:

- (a) If the Tested Round-Trip Efficiency Rate in effect during month m is less than [____].00%, then:

$$RTERF_m = \frac{\text{Tested Round-Trip Efficiency Rate}_m}{\text{Guaranteed Round-Trip Efficiency Rate}}$$

Where:

Tested Round-Trip Efficiency Rate_m is the Tested Round-Trip Efficiency Rate for the Energy Storage System in effect during month m ;

Provided that if the Round-Trip Efficiency Rate Factor of the Energy Storage System for month m exceeds 1.00 under this clause (a), then the Round-Trip Efficiency Rate Factor of the Energy Storage System for month m shall be deemed to be 1.00 for purposes of this clause (a).

- (b) If the Tested Round-Trip Efficiency Rate in effect during month m is equal or greater than [____].00%, then:

$$RTERF_m = \text{Tested Round-Trip Efficiency Rate}_m \text{ divided by } 0.[\_\_\_\_];$$

Provided that if the Round-Trip Efficiency Rate Factor of the Energy Storage System for month m exceeds 1.[____] under this clause (b), then the Round-Trip Efficiency Rate Factor of the Energy Storage System for month m shall be deemed to be 1.[____] for purposes of this clause (b).

- (c) If the Round-Trip Efficiency Rate for an Energy Storage System changes during such month, then the Monthly Capacity Payment for the applicable Project System for such month shall be prorated based on the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) of the Energy Storage System before such change and the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) for the Energy Storage System from and after such change.

APPENDIX 9.3

MONTHLY ENERGY PAYMENT

The Monthly Energy Payment for each month of the Delivery Period shall be equal to the sum of the Monthly Energy Payment for each Project System, as determined as follows:

1. Monthly Energy Payment. The Monthly Energy Payment for a Project System shall equal the sum for each hour in the month of the product of (a) the Energy Price times (b) Generation Facility Bundled Green Energy for such Project System in such hour.
2. Energy Price. The price for the Generation Facility Bundled Green Energy that is delivered to Buyer in each Contract Year shall be as follows ("Energy Price"):

Contract Year	Energy Price (\$/MWh)

Provided, however, that:

(a) if Seller delivers Generation Facility Bundled Green Energy in the aggregate for any CAISO settlement interval (not to exceed one hour) in excess of the product of the Contract Capacity for the Generation Facility times the length of such settlement interval, expressed in hours, then the Energy Price for such excess Generation Facility Bundled Green Energy in such settlement interval shall be reduced to zero dollars (\$0), and if the real time Locational Marginal Price for the Delivery Point during such settlement interval is less than zero dollars (\$0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times such excess Generation Facility Bundled Green Energy; and

(b) if Seller delivers Generation Facility Bundled Green Energy in the aggregate for any Contract Year during the Delivery Period in excess of one hundred five percent (105%) of the annual Contract Quantity, then for any such portion of such Generation Facility Bundled Green Energy (i) in excess of one hundred five percent (105%) of the annual Contract Quantity up to one hundred ten percent (110%) of the annual Contract Quantity, the Energy Price for such excess Generation Facility Bundled Green Energy for the remainder of that Contract Year shall be reduced to the lesser of (x) the Energy Price multiplied by fifty percent (50%) and (y) the real time Locational Marginal Price for the Delivery Point during the CAISO settlement interval when such Generation Facility Bundled Green Energy was delivered and (ii) in excess of one hundred ten percent (110%) of the annual Contract Quantity, the Energy Price for such excess Generation Facility Bundled Green Energy for the remainder of that Contract Year shall be reduced to zero dollars (\$0); and, in each case, for each CAISO settlement interval during the time in which the real time Locational Marginal Price for any such excess Generation Facility Bundled Green Energy is less than zero dollars (\$0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times the Generation Facility Bundled Green Energy delivered during such settlement interval.

APPENDIX 11.3

LETTER OF CREDIT FORM¹³

IRREVOCABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

(the "Bank") hereby establishes this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in San Diego, California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation in compliance on or prior to 5:00 p.m. California time, on or prior to the Expiration Date, of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank. The facsimile transmittal shall be

¹³ **Note to Draft:** Under Buyer review.

deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored except as described in the succeeding paragraph.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

By: _____
Title: _____

ATTACHMENT A TO APPENDIX 11.3
DRAWING CERTIFICATE
TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT
Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit

Reference Number: _____

The undersigned _____, an authorized representative of San Diego Gas & Electric Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Standby Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, for the following reason(s) [check applicable provision]:
 - []A. An Event of Default, as defined in the Energy Storage Power Purchase Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 - []B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - []C. Applicant has forfeited all or part of its Pre-Construction Security as set forth and defined in the Agreement.
 - []C. Applicant has incurred Daily Delay Damages as set forth and defined in the Agreement.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: SAN DIEGO GAS & ELECTRIC COMPANY

By:
Name:
Title:

APPENDIX 15.1
AVAILABILITY NOTICE¹⁴

Availability Notice

Trading Day: _____

Station: _____ Issued By: _____

Unit: _____ Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Charging Capacity	Available Discharging Capacity	Minimum Output	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				

¹⁴ **Note to Draft:** Under Buyer review.

20:00				
21:00				
22:00				
23:00				
0:00				

Comments: _____

APPENDIX 15.3
DISPATCH AND UPDATED DISPATCH NOTICES¹⁵

Dispatch Notice

Trading Day: _____

Station: _____ Issued By: _____

Unit: _____ Issued At: _____

Hour Ending	Scheduled Energy for Charging	Scheduled Energy for Dischargi ng	Spinning Reserve	Non- Spinning Reserve	Comments
	(MW)	(MW)	(MW)	(MW)	
1:00					
2:00					
3:00					
4:00					
5:00					
6:00					
7:00					
8:00					
9:00					
10:00					
11:00					
12:00					
13:00					
14:00					
15:00					
16:00					
17:00					
18:00					
19:00					
20:00					

¹⁵ **Note to Draft:** Under Buyer review.

21:00					
22:00					
23:00					
0:00					

Comments: _____

Updated Dispatch Notice

Trading Day: _____

Station: _____ Issued By: _____

Unit: _____ Issued At: _____

Changes from Scheduled Delivery are highlighted.

Comments: _____

Hour Ending	Scheduled Energy for Charging	Scheduled Energy for Discharging	Spinning Reserve	Non-Spinning Reserves	Comments
	(MW)	(MW)	(MW)	(MW)	
1:00					
2:00					
3:00					
4:00					
5:00					
6:00					
7:00					
8:00					
9:00					

10:00					
11:00					
12:00					
13:00					
14:00					
15:00					
16:00					
17:00					
18:00					
19:00					
20:00					
21:00					
22:00					
23:00					
0:00					

APPENDIX 15.8
DAILY OPERATING REPORT¹⁶

Buyer shall create a template for use as a Daily Operating Report which contains all the information required by Buyer regarding the Project's daily operations (including the Project's hourly Availability, Capacity, Charging Energy, Delivered Energy, Stored Energy, Maximum Energy Capacity and State of Energy), with Seller's approval (which approval shall not be unreasonably withheld). Until such template is created and approved by the Parties as provided above, Seller shall not be required to provide such Daily Operating Report as set forth in Section 15.8 of the Agreement.

¹⁶ **Note to Draft:** Under Buyer review.

APPENDIX 15.8 COMMUNICATIONS PROTOCOLS¹⁷

Communication Protocols

Dated as of _____

These Communication Protocols have been drafted to assist in the operation of the Energy Storage Power Purchase Agreement between Seller and Buyer dated _____ (the “Agreement”). If there is any inconsistency between the Communication Protocols and the Agreement, the Agreement shall prevail. These Communication Protocols shall become effective as of the date first set forth above. The Parties acknowledge and agree that these Communication Protocols are subject to change and shall be modified as evolving market conditions and rules may require. Unless otherwise defined in these Communication Protocols, defined terms herein shall have the meanings ascribed in the Agreement.

1. Contacts and Authorized Representatives

The “Contact Information” tables sets forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. References in these Communication Protocols to notices by telephone, fax, or e-mail shall be deemed to refer to the applicable number set forth in the Contact Information Table.

2. Communication Protocols - General

2.1 Intra-day Communication: All communications and notices between the Parties that occur intra-day for the applicable trading day including those regarding emergencies, Dispatch Notices, Updated Dispatch Notices, Availability Notices, and notices to avoid imbalance penalties, uninstructed deviation charges/credits or any other CAISO charge types specified in the Agreement, shall be provided telephonically to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) Dispatch Desk, (2) Plant Manager. If to Buyer, such notices and communications shall be provided to the following contact, in order of priority, Real Time. Each Party shall confirm all Intra-day Communication either electronically or via fax as soon as practicable.

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and Buyer, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: Buyer and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

During Transmission System Emergencies, Seller’s operations staff shall communicate with Buyer’s Grid Operations Department via established communications devices. Buyer’s Grid

¹⁷ **Note to Draft:** Under Buyer review.

Operations Department will periodically test the communications devices to be utilized during system emergencies.

2.4 Verbal Communication: Each Party shall provide confirmation (either electronically or via facsimile) of any telephonic operating notice or communication provided to the other Party as soon as practicable. All telephonic communication shall be subject to recording.

2.5 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreements and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.6 Staffing: Parties will have available 24 hours a day, seven days a week, personnel available to communicate regarding the implementation of these Communication Protocols.

Contact Information Table

Contacts and Authorized Representatives for Buyer

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by Buyer with timely Notice to Seller.

Contact	Primary Phone	Secondary Phone	Fax	Email
Real Time	858-650-6160	619-517-5661	858-650-6191	tsched@semprautilities.com
Day-Ahead Scheduling	858-650-6178	858-650-6160	858-650-6191	presched@semprautilities.com
Day-Ahead Trading	858-650-6137	858-650-6160	858-650-6191	jpasquito@semprautilities.com
Settlements – Power	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Contract Administration	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Outage Scheduling	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Transmission System Emergencies	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD

Contacts and Authorized Representatives for Seller

Outlined below is the contact and communication information for the relevant Seller employees. This list may be amended by Seller with timely Notice to Buyer.

Contact:	Primary Phone	Secondary Phone	Fax	Email
Dispatch Desk (Day Ahead)				
Dispatch Desk (Real Time)				
Outage Desk				
Plant Manager				

Contract Administrati on				
Settlements				
Operations Manager				
Operations Supervisor				

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Buyer") and _____ ("Seller"), each individually a "Party" and together the "Parties", dated as of _____, 2024 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3.1 and Section 3.2 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Name: Party B / Seller

All Notices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: (____) ____-____
Facsimile: (____) ____-____
Duns: _____
Federal Tax ID Number: _____

Invoices:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: (____) ____-____
Facsimile: (____) ____-____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets

Credit and Collections:

San Diego Gas & Electric Company
8315 Century Park Court CP 21C
San Diego, CA 92123
Attn: Energy Risk Manager
Telephone: (858) 650-6190
Email: sdge_mmcredit@sdge.com

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141

Scheduling:

< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: () -
Real Time: () -
Facsimile: () -

Payments:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

Wire Transfer:

< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: () -

Credit and Collections:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Article Two

Transaction Terms
and Conditions

- ☐ Optional provision in Section 2.4.
If not checked, inapplicable.

Article Four

Remedies for Failure
to Deliver or Receive

- ☒ Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- ☐ Cross Default for Party A:
☐ Party A: N/A Cross Default Amount: N/A
☐ Other Entity: N/A Cross Default Amount: N/A
- ☐ Cross Default for Party B:
☐ Party B: N/A Cross Default Amount: N/A
☐ Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- ☒ Option A (Applicable if no other selection is made.)
☐ Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

☐ Option C (No Setoff)

Article 8

Credit and
Collateral Requirements

**8.1 Party A Credit Protection: [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☐ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☐ Not Applicable
☐ Applicable
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
- (e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:
Party A Collateral Threshold: \$ _____;
provided, however, that Party A's Collateral
Threshold shall be zero if an Event of Default or
Potential Event of Default with respect to Party A
has occurred and is continuing.
Party A Independent Amount: \$ _____
Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:
☐ It shall be a Downgrade Event for Party A if
Party A 's Credit Rating falls below _____
from S&P or _____ from Moody's or if Party A
is not rated by either S&P or Moody's
☐ Other:
Specify: _____
- (e) Guarantor for Party A: N/A
Guarantee Amount: N/A

Article 10

Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 1.23 is deleted in its entirety and replaced with the following:

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(b) Force Majeure shall not be based on:

(i) Buyer’s inability economically to use or resell the Product purchased hereunder;

(ii) Seller’s ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller’s inability to obtain governmental approvals or other approvals of any type for the construction, operation, or maintenance of the Unit;

(iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the

Unit, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

(v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller's Affiliates, or the Unit

(vii) delays or increased costs arising or resulting from the COVID-19 epidemic, or

(viii) any equipment failure except to the extent such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above.

3. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

4. Section 2.3 is deleted in its entirety and replaced with the following:

"2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."

5. Section 2.4 is hereby amended by deleting the words "either orally or" in the seventh line.

6. The following new Sections 5.1(i) and 5.1(j) are inserted immediately after Section 5.1(h):

"(i) Seller's failure to deliver a Remedial Action Plan if such failure is not remedied within five (5) Business Days after receipt of Buyer's Notice of such failure.

(j) Seller's failure to (i) achieve any individual Critical Milestone by the date that is forty-five (45) days after the corresponding milestone date set forth in Appendix B, subject to extension on a day-for-day basis pursuant to Section 3.3(d)(2), and (ii) deliver a Remedial Action Plan that demonstrates to Buyer's reasonable satisfaction that Seller can achieve the

Initial Delivery Date by the end of the Cure Period following the Guaranteed Initial Delivery Date, if such failure is not remedied within five (5) Business Days after receipt of Buyer's Notice of such failure."

7. Section 5.2 is amended by adding the following at the end of that section:

"Notwithstanding any provision in this Agreement to the contrary, if the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero."

8. Section 6.8 is deleted in its entirety.
9. Section 10.2(ii) of the Master Agreement shall be modified by inserting "Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation," at the beginning of the first sentence in such section.
10. Section 10.5 of the Master Agreement shall be deleted in its entirety and replaced with the following:

"Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided that either Party may assign this Agreement to an Affiliate without the other Party's consent (and thereby relieving itself from further liability hereunder) so long as (a) the assignee is as creditworthy as the assigning party, or better, (b) the assigning Party notifies the other Party no later than thirty (30) Business Days before the effective date of the assignment and the assignee assumes in writing all of the assigning Party's obligations and liabilities hereunder. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and thereby relieving itself from further liability hereunder), assign this Agreement to any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Buyer may also assign this Agreement (and thereby relieve

itself from further liability hereunder), to a Qualified Assignee, so long as Buyer notifies Seller no later than thirty (30) days before the effective date of the assignment and the assignee assumes in writing all of Buyer's obligations and liabilities hereunder. "Qualified Assignee" shall mean: any community choice aggregation entity formed in the State of California with a Credit Rating of BBB- or better. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

11. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

"THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT."

12. Section 10.11 of the Master Agreement shall be deleted in its entirety and replaced with the following:

10.11 Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders or potential lenders, contractors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) in order to comply with any Applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing

Party”), other than to those entities set forth in clause (vi); (v) to a Qualified Assignee subject to an appropriate non-disclosure agreement; or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (iv) of this Section 10.11 (“Disclosure Order”), each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Except as otherwise agreed to in this Section 10.11, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld or delayed.

13. The following is added to the Master Agreement as a new Section 10.12:

10.12 Standard of Review. No Party shall seek to revise the rates, terms or conditions of service of this Agreement pursuant to the provisions of Section 205, 206 or 306 (or any other provision) of the Federal Power Act. Absent the agreement of all Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S., 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. (2010) (commonly known as the “Mobile-Sierra doctrine”).

14. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

- 1.1 “Accepted Electrical Practices” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of other, but rather to those practices, methods and act generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.
- 1.2 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.4 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.5 “Buyer” has the meaning specified in the introductory paragraph.
- 1.6 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.7 “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.
- 1.8 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, *[Comment: Include bracketed language if the Product includes flexible capacity]* [(c) the Flexible RA Attributes, and (c/d)] any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.9 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.10 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer

shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.

- 1.11 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.12 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.13 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.14 “Confirmation Effective Date” has the meaning specified in Section 2.2.
- 1.15 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.16 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.17 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.4.
- 1.18 “Contract Term” has the meaning set forth in Section 2.1.
- 1.19 “Construction Period Security” has the meaning specified in Section 9.1(b).
- 1.20 “CPUC” means the California Public Utilities Commission.
- 1.21 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer and all other relief requested in SDG&E’s submission of the Agreement for approval, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) finds that the procurement under this Agreement satisfies all of the requirements set forth in CPUC decision(s) **[INSERT APPLICABLE DECISION NUMBERS]**.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

- 1.22 “CPUC Approval Security” has the meaning specified in Section 9.1(a).

- 1.23 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.24 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.25 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement.
- 1.26 “Critical Milestone” means each of the milestones indicated as such in Schedule B.
- 1.27 “Daily Delay Damages” means liquidated damages paid by Seller to Buyer in the amount of [INSERT] (\$XX,XXX) per day for each day of delay.
- 1.28 “Delivery Period” has the meaning specified in Section 3.3.
- 1.29 “Delivery Period Security” has the meaning specified in Section 9.1(c).
- 1.30 “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.31 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.32 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.

- 1.33 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.34 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.35 “GADS” means the Generating Availability Data System, or its successor.
- 1.36 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.37 “Guaranteed Initial Delivery Date” has the meaning specified in Section 3.3(a).
- 1.38 “Initial Delivery Date” has the meaning set forth in Section 3.3(b).
- 1.39 “Initial Showing Month” has the meaning set forth in Section 3.3(b).
- 1.40 “Interconnection Agreement” means the interconnection agreement entered into by Seller and/or Seller’s Affiliates pursuant to which the Project will be interconnected with the Participating Transmission Owner’s or other utility owned or managed electric system or to the CAISO Grid, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.
- 1.41 “Interconnection Facilities” means all apparatus installed to interconnect the Project to the Participating Transmission Owner’s or other utility owned or managed electric system or to the CAISO Grid to make available to Buyer the Contract Quantity, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner’s electric system (or other system to which the Participating Transmission Owner’s electric system is connection, including the CAISO Grid) and Buyer’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner’s electric system or on the systems of others to which the Participating Transmission Owner’s electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner’s electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.
- 1.42 “Interest Rate” means, for purposes of this Transaction, for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the

interest rate on Commercial Paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

- 1.43 “Letter of Credit” means an irrevocable standby letter of credit in substantially the form of Appendix C attached hereto issued by a commercial bank chartered under the laws of the United States or a U.S. branch of a foreign commercial bank in each case with a Credit Rating of at least “A-” by S&P or “A3” by Moody’s.
- 1.44 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.45 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.46 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.47 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.48 “LSE” means load-serving entity.
- 1.49 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.50 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.51 “Milestone Schedule” has the meaning specified in Section 2.3.
- 1.52 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.53 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.54 “Monthly Progress Report” has the meaning specified in Section 2.3.
- 1.55 “Moody’s” means Moody’s Investors Services, Inc. or its successor.

- 1.56 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.57 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.58 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.59 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.60 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.61 “Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected. As of the Confirmation Execution Date, the Participating Transmission Owner is *[INSERT]*.
- 1.62 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.63 “Product” has the meaning specified in Section 3.1.
- 1.64 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.65 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.66 “Qualified Assignee” has the meaning set forth in the new Section 10.5 of the Master Agreement.
- 1.67 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.68 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.69 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.70 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent

authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.71 “Remedial Action Plan” has the meaning specified in Section 2.3.
- 1.72 “Replacement Capacity” means capacity which has equivalent Capacity Attributes, including qualification as incremental to the list of resources that form the baseline of the need determination conducted in Rulemaking 20-05-003 as such list is set forth as of the Confirmation Execution Date at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_baseline_gen_list_20220902, as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.73 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.74 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.75 “RMR Contract” has the meaning set forth in the Tariff.
- 1.76 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.77 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.78 “Seller” has the meaning specified in the introductory paragraph.
- 1.79 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.80 “Substitution Rules” has the meaning set forth in Section 3.8(b).
- 1.81 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]*.
- 1.82 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.83 “Transaction” has the meaning specified in the introductory paragraph.
- 1.84 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.85 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.

- 1.86 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Quantity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Quantity for which Seller is required hereunder, but fails, to provide Replacement Quantity to Buyer.
- 1.87 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.88 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

2. Term

2.1 Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

2.2 Conditions Precedent; Binding Nature

Except for obligations required prior to the Confirmation Effective Date, this Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the “Confirmation Effective Date”). Buyer will diligently pursue CPUC Approval after the Confirmation Execution Date. No later than [____], Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement but with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking CPUC Approval therefor. If, no later than [____], no agreement is reached, either Party may terminate this Agreement upon delivery of notice to the other Party.

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then Buyer may terminate this Agreement upon delivery of notice to Seller. This Agreement shall be effective and binding as of the Confirmation Effective Date.

2.3 Milestone Schedule.

In order to meet the Guaranteed Initial Delivery Date, Seller shall use reasonable efforts to meet the construction milestones set forth on Appendix B (“Milestone Schedule”) and to avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the Project has not yet met its Initial Delivery Date, Seller shall deliver to Buyer a monthly progress report,

substantially in the form set forth in Appendix C (“Monthly Progress Report”), describing its compliance with the Milestone Schedule, including projected time to completion of any milestones, for the Project. Seller shall include in any Monthly Progress Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and provide any such documents as may be reasonably requested by Buyer. In addition, Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which it is aware which could materially impact its ability to meet the Milestone Schedule. If Seller misses a milestone listed in the Milestone Schedule by more than ten (10) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone Schedule completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail (a) any delays (actual or anticipated) beyond the scheduled Milestone Schedule dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and (b) Seller’s detailed description of its proposed course of action to achieve the missed milestones and all subsequent milestones by the Guaranteed Initial Delivery Date or the end of the Cure Period following the Guaranteed Initial Delivery Date.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes] **[Comment: Second bracketed language to be used if the Product includes flexible capacity]**) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) **[Insert if to be used if the Product includes flexible capacity]**: The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.]

3.2 Firm Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for Force Majeure, if the Unit(s) are not available to provide any portion of the Product, for any reason including without limitation any Outage or any adjustment of the Capacity Attributes of any Unit(s), Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10.

3.3 Delivery Period

- (a) Guaranteed Initial Delivery Date. Subject to Section 3.3(d)(1), Seller shall achieve the Initial Delivery Date by [INSERT], as such date may be extended pursuant to Section 3.3(d)(2) ("Guaranteed Initial Delivery Date").
- (b) The "Delivery Period" shall be the period during which the Product is available to Buyer, and will commence at 12:01 a.m. PPT on the first day of the first Showing Month for which the Product is included in a Supply Plan (the "Initial Showing Month") and shall continue until midnight on the date that is the last day of the month in which the [INSERT] ([XX]) anniversary of the Initial Showing Month occurs; provided, however that the Initial Showing Month shall not be earlier than [INSERT MONTH, YEAR]. Within [thirty-five (35)] days after the Initial Delivery Date, Seller shall submit a Supply Plan for the first month of the Delivery Period. The "Initial Delivery Date" shall be the date upon which Seller has completed Seller's obligations set forth in this Section 3.3(b), below, in order to bring the Project, or designated portion thereof, into full operation:
 - 1) Seller has completed the Milestones according to the Milestone Schedule in Appendix A, in order to bring the Project, or designated portion thereof, into full operation as contemplated by this Agreement;
 - 2) the Project has been constructed and installed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices;
 - 3) the Project shall have successfully passed all commercial operation tests at a level that demonstrates at least one hundred percent (100%) of the Contract Quantity, and complete test reports have been submitted to Buyer, as set forth in a written notice from Seller to Buyer;
 - 4) Seller has received its market-based rate authority from FERC to sell Product to Buyer under the terms of this Agreement, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;
 - 5) Seller has executed the Participating Generator Agreement and the Meter Service Agreement required by the CAISO or any Participating Transmission Owners with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);
 - 6) Seller has achieved and been granted "Full Capacity Deliverability Status" for the interconnection capacity applicable to the Project for a fraction of the

Project at least equal to the Contract Quantity, and entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Participating Transmission Owner's electric system and CAISO Grid; and

- 7) Seller has delivered to Buyer the required Delivery Period Security and related documents and instruments as set forth in Section 9.1(c).
- (c) Seller Initial Delivery Date Representation. As of the Initial Delivery Date, Seller represents that it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.
- (d) Delayed Initial Delivery Date.
- 1) Daily Delay Damages. If Seller has not satisfied the conditions precedent set forth in Section 3.3(b) for the Initial Delivery Date of the Project by the Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of the lesser of (I) [one hundred twenty (120) days], minus the number of days of extension for Force Majeure pursuant to Section 3.3(d)(2)(C), or (II) one hundred (100) days, of delay (the "Cure Period"). Buyer shall be entitled to recover the Daily Delay Damages owed by Seller from the Construction Period Security held by Buyer if Seller fails to pay the Daily Delay Damages in accordance with this Agreement. Each Party agrees and acknowledges that (A) the actual damages that Buyer would incur due to a delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date would be difficult or impossible to predict with certainty, (B) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (C) the Daily Delay Damages set forth in this section are the sole and exclusive remedy for Seller's delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date but shall not otherwise act to limit any of Buyer's rights or remedies arising from any other Event of Default by Seller.
 - 2) Excused Delays. For all purposes under this Agreement, the Guaranteed Initial Delivery Date and the milestone date for each Critical Milestone will be extended on a day for day basis without imposition of any Daily Delay Damages to the extent that Seller is delayed in its critical path to achieving the Initial Delivery Date by the Guaranteed Initial Delivery Date or a Critical Milestone date due to any of the following events:
 - A. Delay by the Participating Transmission Owner or the CAISO in installing the Interconnection Facilities for which it is responsible in accordance with the schedule set forth in the Interconnection Agreement. For clarity, Seller shall not be excused and shall be required to pay Daily Delay Damages if the Guaranteed Initial Delivery Date has not been achieved due to the Participating Transmission Owner or the CAISO installing the Interconnection Facilities within the schedule set forth in the Interconnection Agreement. Seller acknowledges and agrees that nothing in this Agreement is intended to abrogate, amend or modify the terms of the Interconnection Agreement

between it and the Participating Transmission Owner, or any other agreement between it and the Participating Transmission Owner. Except as may be set forth in such electrical interconnection agreements, the Participating Transmission Owner has not made and makes no, and Seller is not relying on any, representations or warranties of any kind or nature, express or implied, with respect to the electrical interconnection, including, but not limited to, any representations or warranties concerning the costs, construction schedule, or permitting of, or any other matter related to, the electrical interconnection for the Project. Seller's sole and exclusive remedy under this Agreement for any delay by the Participating Transmission Owner or the CAISO in completing the Interconnection Facilities for which it is responsible is an extension of the Guaranteed Initial Delivery Date in accordance with this Section 3.3(d)(2)(A).

- B. Buyer's delay or other failure to perform any of its material obligations under this Agreement which are to be performed prior to the Initial Delivery Date in a manner that directly delays the Initial Delivery Date.
- C. Delays caused by Force Majeure up to no more than [ninety (90)] days in aggregate.
- D. Any delay in obtaining CPUC Approval beyond [INSERT].]

3.4 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
	[INSERT]	All Showing Months in Delivery Period		
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved ***[Insert the following for projects with shared facilities:***

Interconnection

- (a) The Parties acknowledge and agree that certain of the Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements ("Shared Facilities"); *provided*, such agreements provide for separate metering of the Project.
- (b) For the Contract Term, the Interconnection Agreement shall provide for interconnection capacity with full capacity deliverability status for a fraction of the Project at least equal to the Contract Quantity. If there is a partial outage of the Shared Facilities, any associated reduction in capacity shall be allocated pro rata between the Project and the other generating facilities and energy storage projects utilizing the Shared Facilities for purposes of Section 3.2.
- (c) Seller shall secure through the CAISO the CAISO Resource ID that is to be used solely for this Project.]

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]* ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.6.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "Monthly Payment" to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

A = applicable Contract Price (in \$/kW-day) for that calendar day

B = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity “**B**” exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity “**B**” be less than zero.

d = Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

4.5 Audit

Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and the NQC of the Unit.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Seller will be excused if it is unable to provide any portion of the Contract Quantity for the reasons set forth in Section 3.2. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity (less any reductions permitted pursuant to Section 3.2).

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. If the Product includes Local RA Attributes, Seller may propose to provide Replacement Capacity from one or more Replacement Units that do not provide Local RA Attributes, and, upon Seller's request, Buyer will reasonably evaluate such proposal and provide prompt notice of its determination to Seller. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer under Section 5.2 and/or the indemnification of Buyer against any penalties, fines or costs under Section 5.3 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Quantity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Quantity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;

- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, plus (B) the Capacity Replacement Price times the portion of Contract Quantity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Quantity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Quantity

In addition to the damages Seller is required to pay pursuant to Section 5.2(b)(i)(A) for the portion of Contract Quantity that Buyer has replaced, if Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Quantity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Quantity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller’s failure to provide any portion of the Contract Quantity or any portion of the Replacement Capacity;
- (b) Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Quantity;
- (c) A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation

Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CAISO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

6.2 Seller's Represents, Warrants and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;

- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

6.3 **[For a project with a delivery Term in excess of 12 years: Climate Risk**

Seller hereby provides an acknowledgement that it has considered long-term climate risks to the Project as required by Ordering Paragraph 14 of CPUC decision D.20-08-046, and will provide a facility safety plan considering climate risks to Buyer, when available.]

7. **Confidentiality**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. **Counterparts**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

9. **Collateral Requirements** [NOTE to respondents: Amount to be determined by SDG&E credit department]

9.1 To secure its obligations under this Agreement Seller agrees to deliver to Buyer and maintain in full force and effect for the period set forth below, the following Performance Assurance:

- (a) CPUC Approval Security, in the amount of [\$_____] in the form of cash or a Letter of Credit from the Confirmation Execution Date of this Agreement until the return date specified in Section 9.2(a) below; and
- (b) Construction Period Security in the amount of [\$_____] in the form of cash or a Letter of Credit from five (5) Business Days after the Confirmation Effective Date until the return date specified in Section 9.2(b) below; and

- (c) Delivery Period Security in the amount of [\$_____] in the form of cash or a Letter of Credit from the commencement of the Delivery Period until the return date specified in Section 9.2(c) below.

The Performance Assurance set forth above shall not be deemed a limitation of damages.

9.2 Return of Performance Assurance.

- (a) Buyer shall promptly return to Seller the unused portion of the CPUC Approval Security after the earlier of (A) the date on which Seller has delivered the Construction Period Security, as applicable, and (B) termination of the Agreement.
- (b) Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Period Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
- (c) Buyer shall promptly return to Seller the unused portion of the Delivery Period Security after the following have occurred: (A) the Delivery Period has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

9.3 Collateral Posting.

- (a) In the event that Seller elects to provide cash as the applicable Performance Assurance, Buyer shall deposit (or cause to be deposited) such cash in an account bearing interest at the rate per annum equal to the Interest Rate. Interest shall be calculated monthly (without compounding) at a monthly rate of 1/12 of such Interest Rate, shall be retained in such account, and shall be applied toward the amount of the applicable Performance Assurance, and any amount in excess of the required amount of applicable Performance Assurance on the last Business Day of each calendar year shall be returned to Seller.

9.4 Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

- (a) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit. If Seller fails to renew or cause the renewal of any outstanding Letter of Credit on a timely basis as provided in this section, Buyer shall have the right to draw the entire amount of such Letter of Credit.

- (b) Upon, or at any time after, the occurrence and during the continuation of an Event of Default by Seller, then Buyer may draw on up to the entire undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be used to offset Buyer's damages and to the extent in excess of Buyer's damages shall be deemed Performance Assurance as security for the Seller's obligations to Buyer and Buyer shall at all times have the exclusive dominion and control of, and at no time shall Seller have any rights or powers to direct or control such cash proceeds. Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (i) for any failure to provide sufficient Performance Assurance or (ii) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.
- (c) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.
- (d) An additional "Event of Default" shall be, with respect to Seller as the "Defaulting Party", the occurrence of any of the following with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives notice of the occurrence of any of the following events:
 - (a) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;
 - (b) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
 - (c) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
 - (d) such Letter of Credit fails or ceases to be in full force and effect at any time;
 - (e) the issuer of such Letter of Credit becomes Bankrupt; or
 - (f) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit.

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this

Transaction only, the following language is to be added at the end of Section 5.2 of the EEI Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller's Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

a _____ SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

APPROVED as to legal form _____

APPENDIX A

Unit Information

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

APPENDIX B

Project must be built in accordance with the project description in Appendix A.

MILESTONE SCHEDULE

*[SDG&E NOTE: THE BELOW SCHEDULE IS ILLUSTRATIVE AND SHOULD BE EXPANDED
BASED ON THE SPECIFIC PROJECT STATUS]*

Milestone Description	Milestone Date	Critical Milestone (Y / N)
File application(s) for Required Permit(s)		<u>Y</u>
Receipt of Required Permit(s)		
Execute purchase order for the battery system		
Execution of main construction contract or issuance of a notice to proceed prior to final contract execution		<u>Y</u>
Site readiness for construction (including receipt of all zoning approvals, easements, rights of way, utility access)		
Commencement of Construction Activities		<u>Y</u>
Battery deliveries to site (or staging warehouse in California) (at least 90% of total)		<u>Y</u>
Synchronization of the Energy Storage System to CAISO Grid		
Submittal of all operational documentation including successful acceptance testing and approved test report		
Completion of system commissioning and pre-operational testing		
Achievement of Initial Delivery Date		<u>Y</u>

Appendix C [If applicable]

Form of Letter of Credit

LETTER OF CREDIT FORM

Reference Number: _____ Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of __, a __ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation in compliance on or prior to 5:00 p.m. New York time, on or prior to the Expiration Date, of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored except as described in the succeeding paragraph.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 ("UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 14(8) AND 36 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. MATTERS NOT COVERED BY THE UCP SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

AUTHORIZED SIGNATURE for Bank

By: _____

Title: _____

ATTACHMENT A TO APPENDIX C
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit

Reference Number:

The undersigned _____, an authorized representative of San Diego Gas & Electric Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to irrevocable Standby Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:

- ☐ A. An Event of Default, as defined in the [INSERT] Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing or an amount is due and unpaid to Beneficiary by Applicant.
- ☐ B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
- ☐ C. Applicant has forfeited all or part of its Pre-Construction Security as set forth and defined in the Agreement.
- ☐ D. Applicant has incurred Daily Delay Damages as set forth and defined in the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND _____/100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

APPENDIX B
FORM OF MONTHLY PROGRESS REPORT

**Monthly Progress Report
of
[INSERT SELLER'S NAME]
provided to
San Diego Gas & Electric Company
[Date]**

Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Long-Form Confirmation Agreement by and between [insert Seller's name] (Seller) and San Diego Gas & Electric Company (Buyer) dated [_____, 2024] (the "Agreement").

Seller shall review the status of each significant element of the Milestone Schedule and Seller shall identify such matters referenced in clauses (i)-(iii) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Unit(s) or the Milestone Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that conditions precedent and the milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- (i) Any material matter or issue arising in connection with a permit requirement, or compliance therewith, with respect to which there is a dispute over the interpretation of a law or regulation, any organized public opposition to the granting of a necessary permit, or any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, in each case which in Seller's reasonable opinion could reasonably be expected to materially threaten or prevent commercial operation of the Unit(s) by the start of the Delivery Period;
- (ii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to achieve commercial operation of the Unit(s) by the start of the Delivery Period;
- (iii) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form Monthly Progress Report to Buyer, together with all attachments and exhibits.

Major activities to be performed for each aspect of the Project during the current calendar month.

Please provide a brief summary of the major activities to be performed for each of the following aspects of the Unit(s) during the current calendar month, including any activity, event, or occurrence which may have a material adverse impact on the construction of the Unit(s) or completion of the Unit(s) on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller's inability to achieve a milestone date:

Design**Engineering****Major Equipment procurement**

Construction

Milestone report

Permitting

Major activities scheduled to be performed in the previous calendar month but not completed as scheduled.

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Overall assessment of the Project status.

Please provide a brief summary of your assessment of the status and progress of each of the following aspects of the Unit(s):

Design

Engineering**Major Equipment procurement****Construction****Milestone report****Permitting****Exhibit 1: Progress Curve.**

The progress curve which shows the progress achieved on the construction of the Unit(s) through the current month against the current Monthly Progress Report is included herewith as Exhibit 1.

Exhibit 2: Photos.

The photos included with this Exhibit 2 indicate construction progress to-date at the Unit(s) site.

Safety and Health Reports**Any work stoppage from the previous calendar month:****Work stoppage impact on construction of the Project:**

I, _____, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in the attached _____'s Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Unit(s) as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

[Form of PPA for As-Available, Baseload, Peaking or Dispatchable Product]

[Standard contract terms and conditions that “may not be modified” per CPUC D.04-06-014 and subsequent decisions are shown in red shaded text and standard contract terms and conditions that may be modified per CPUC D.04-06-014 and subsequent decisions are shown in green shaded text.]

POWER PURCHASE AGREEMENT

Between

SAN DIEGO GAS & ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

POWER PURCHASE AGREEMENT

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COVER SHEET

This Power Purchase Agreement is made as of the following date: [_____]. This Power Purchase Agreement and all exhibits, schedules, appendices, and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties as well as all written and signed amendments and modifications thereto shall be a part of, and shall be referred to as, the "Agreement." The Parties to this Agreement (hereinafter individually a "Party" and collectively the "Parties") are the following:

Name: _____ ("Seller")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Confirmation: _____

FAX: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

Name: San Diego Gas & Electric Company
("Buyer")

All Notices:

Street: 8315 Century Park Court

City: San Diego, CA Zip: 92123

Attn: Electric & Fuel Procurement - Contract
Administration

Phone: (858) 636-5536

Facsimile: (858) 650-6190

Duns: 006911457

Federal Tax ID Number: 95-1184800

Invoices:

San Diego Gas & Electric Company

8315 Century Park Ct.

San Diego, California 92123-1593

Attn: Electric & Fuel Procurement – Invoicing and
Reporting

Phone: (858) 650-6187

Facsimile: (858) 650-6190

Scheduling:

San Diego Gas & Electric Company

8315 Century Park Ct.

San Diego, California 92123-1593

Attn: Transaction Scheduling Manager

Phone: (858) 650-6160

Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company

PO Box 25110

Santa Ana, CA 92799-5110

Attn: Mail Payments

Phone: (619) 696-4521

Facsimile: (619) 696-4899

Wire Transfer:

BNK: Union Bank of California

for: San Diego Gas & Electric Company

ABA: Routing # 122000496

ACCT: #4430000352

Confirmation: SDG&E, Major Markets

FAX: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company, Major
Markets

555 W. Fifth Street, ML 18A3

Los Angeles, CA 90013-1011

Attn.: Major Markets, Credit and Collections
Manager

With additional Notices of an Event of Default or
Potential Event of Default to:

Attn: _____

Phone: _____

Facsimile: _____

Fax No.: (213) 244-8316

Phone: (213) 244-4343

With additional Notices of an Event of Default or
Potential Event of Default to:

San Diego Gas & Electric Company

8330 Century Park Ct.

San Diego, California 92123

Attn: General Counsel

Phone: (858) 650-6141

Facsimile: (858) 650-6106

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 General. The following terms shall have the following meaning for purposes of this Agreement.

“[AAA][JAMS]” means [the American Arbitration Association] [JAMS, Inc.].

“Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreement” has the meaning set forth in the preamble to the Cover Sheet.

“Arbitration” has the meaning set forth in Section 12.3.

[For As-Available Product only: “As-Available” means a Product for which, subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

- (a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller’s negligence or willful misconduct;
- (b) Force Majeure;
- (c) by the Buyer’s failure to perform;
- (d) by a Planned Outage of the Project;
- (e) a reduction in output as ordered under Dispatch Down Periods; or
- (f) [the unavailability of landfill gas which was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided.] OR [insufficient wind power for the Project to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the Project’s technical specifications.] OR [the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and

which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or avoid or causes to be avoided.] OR [insufficient solar power for the Project to generate energy as determined by the best solar standards utilized by other solar producers or purchasers in the vicinity of the Project.]

[For Dispatchable Product only: “Availability Adjustment Factor” has the meaning set forth in Section 4.1(b).]

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

[For Dispatchable Product only: “Availability Notice” has the meaning set forth in Section 3.3([f/g]).]

“Availability Standards” shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

[For Baseload Product only: “Baseload” means a Unit Firm Product for which the delivery levels are uniform twenty-four (24) hours per day, seven (7) days per week.]

“Bundled Green Energy” means Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of Delivered Energy, in each case, that are produced by or associated with the Project. The quantity of Bundled Green Energy shall be equal to the lesser of the quantity of (i) ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Contract Energy] ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Delivered Energy] (ii) Green Attributes that are delivered to Buyer, and (iii) any other Product that is delivered to Buyer, the quantity of which is measured based on the amount of Delivered Energy. For example, if the quantity of Renewable Energy Credits that are delivered to Buyer is less than the quantity of the ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Contract Energy] ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Delivered Energy], then the quantity of Bundled Green Energy shall be equal to the quantity of Renewable Energy Credits that are delivered to Buyer.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified,

shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

“Buyer” has the meaning set forth on the Cover Sheet.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

[When SDG&E is the SC for the Project: “CAISO Charges Invoice” has the meaning set forth in Section 3.3([a/b])(iv).]

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” means the Renewables Portfolio Standard of California under California Senate Bills 1078 and 107, as codified in California Public Utilities Code Sections 387, 390.1, and Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1, as such provisions are amended or supplemented from time to time.

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including but not limited to any accounting construct so that the Contract Capacity of the Project may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Project to generate Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other similar products.

[For Dispatchable Product only: “Capacity Price” has the meaning set forth in Section 4.1(a).]

[For Baseload, Peaking, or Dispatchable Product only: “Capacity Test” shall be the complete capacity testing procedure for the Project that is reasonably acceptable to Buyer that Seller shall develop no later than thirty (30) days prior to the initial capacity testing of the Project prior to the Commercial Operation Date. The capacity testing procedure shall describe in detail the testing standard(s) to be used for the technology of the Project, the conditions under which testing shall take place, the average summer ambient conditions to which the results will be corrected, and the testing procedures. The same capacity testing procedure shall be applied to all subsequent Capacity Tests.]

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is

an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Agreement.

“Claims” has the meaning set forth in Section 11.2(a).

“Commercial Operation” means that (a) the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement; (b) Seller shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit E; (c) Seller shall have delivered a true, correct, and complete Commercial Operation Certificate from Seller, the Renewable Generation Equipment Supplier, the EPC Contractor, and a Licensed Professional Engineer; (d) Seller shall have delivered to Buyer the Delivery Term Security required under Article 8; (e) Seller has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the construction, operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project and related interconnection facilities; ***[For Baseload, Peaking, Dispatchable Product only:*** and (f) Seller shall have successfully completed the initial Capacity Test and delivered to Buyer a true, correct, and complete report documenting the results of Seller’s initial Capacity Test as required under Section 3.1(f)].

“Commercial Operation Date” means the date on which Seller achieves Commercial Operation for the Project.

“Conditions Precedent” has the meaning set forth in Section 2.3.

“Construction Period Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(ii)/(iii)] to secure performance of its obligations hereunder.

“Contract Capacity” has the meaning set forth in Section 3.1(f).

[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program: “Contract Energy” means the lower of Delivered Energy or Scheduled Energy for any given period in each case net of all Electrical Losses.]

“Contract Quantity” has the meaning set forth in Section 3.1(e).

“Contract Year” means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the first day of the month following the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party 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 a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

“Cover Sheet” means the document that precedes Article 1: General Definitions to this Agreement.

“CP Satisfaction Date” shall mean the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the Party described in Section 2.4).

“CPUC” or “Commission or successor entity” means the California Public Utilities Commission, or successor entity.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves Buyer’s requested relief contained in the approval filing and this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable Law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable. ***[For Agreements for the purchase and sale of TRECS only, use STC REC-3 instead of the foregoing]***

[For Agreements with Delivery Terms greater than two years: “CPUC Approval Date” shall mean the date on which the Conditions Precedent set forth in Section 2.3(a) have been satisfied (or waived in writing by the beneficiary Party described in Section 2.4).]

[For Agreements with Delivery Terms greater than two years: “CPUC Approval Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)(i) to secure performance of its obligations hereunder.]

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P or Moody’s.

“Daily Delay Damages” means an amount equal to (a) the Construction Period Security amount required hereunder, divided by (b) the number of days in the Project Cure Period.

“Day-Ahead Forecast” has the meaning set forth in Section 3.3([d/e]).

[For As-Available and Baseload Products only: “Deemed Bundled Green Energy” means the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Economic Dispatch Down. The quantity of Deemed Bundled Green Energy shall be equal to ***[For As-Available Products:*** (a) the Deemed Delivery Forecast of Energy corresponding to the applicable Economic Dispatch Down periods, whether or not Seller is participating in the VER Forecasting Program during such events, less the amount of Energy scheduled under Economic Dispatch Down as specified in the Dispatch Notice

during such periods, and less any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault but only to the extent the Deemed Delivery Forecast does not already reflect the foregoing *provided that*, if the applicable amount calculated pursuant to this clause (a) is negative, the Deemed Bundled Green Energy shall be zero (0), or (b) if there is no such Deemed Delivery Forecast available during the applicable Economic Dispatch Down periods or if the Bundled Green Energy amount has historically not been determined based on clause (i) of the definition of Bundled Green Energy, the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer as a result of Economic Dispatch Down as determined by Buyer in a commercially reasonable manner, which amount shall not include any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.] **[For Baseload Products:** the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer during the applicable Economic Dispatch Down periods, as determined by Buyer in a commercially reasonable manner, which amount shall not include any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.]]

[For As-Available only: “Deemed Delivery Forecast” means the forecast of the Energy to be produced by the Project prepared by the CAISO or its agent in accordance with the VER Forecasting Program and communicated to the Scheduling Coordinator, which forecast is the last such forecast prepared by the CAISO that does not reflect curtailed production as a result of Economic Dispatch Down periods. As of the Execution Date, such Deemed Delivery Forecast is the CAISO forecast generated through its Resource Specific VER Forecast Usage Report].

[Dispatchable Product only: “Default Availability Factor” means, for any period, the amount determined according to the following formula:

$$\text{Default Availability Factor} = (PH - (EDH - EEDH)) / PH$$

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the initial Contract Capacity (as of the Commercial Operation Date) divided by the initial Contract Capacity. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Forced Outages, Force Majeure events, Dispatch Down Periods, Planned Outages, Buyer’s failure to perform, and other times when any portion of the Contract Capacity is not available and when the Delivered Energy of the Project is less than the amount of Energy dispatched by Buyer; and

EEDH is the number of equivalent excused derate hours solely due to either Force Majeure events, Dispatch Down Periods or Buyer’s failure to perform (and for no other reason), calculated as the sum, for each excused

derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the initial Contract Capacity, divided by the initial Contract Capacity.]

“Defaulting Party” means the Party that is subject to an Event of Default.

“Default Rate” means for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable Law.

“Delivered Energy” means all Energy produced from the Project and delivered to Buyer at the Delivery Point as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

“Delivery Point” means the point at which Buyer receives Seller’s Product, as set forth in Section 3.1(d).

“Delivery Term” has the meaning set forth in Section 3.1(c).

“Delivery Term Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(iii)/(iv)] to secure performance of its obligations hereunder.

“Development Period Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(i)/(ii)] to secure performance of its obligations hereunder.

“Disclosing Party” has the meaning set forth in Section 13.1(a).

“Disclosure Order” has the meaning set forth in Section 13.1(a).

“Dispatch Down Period” means the period of curtailment of delivery of Product from the Project resulting from System Dispatch Down ***[For all Products other than Dispatchable Product: or Economic Dispatch Down]***.

“Dispatch Notice” means the operating instruction, and any subsequent updates given either by Buyer to Seller or by the CAISO to Seller, directing Seller to operate the Project at a specified megawatt output for the period of time set forth in such order.

[For Dispatchable Product only: “Dispatchable” means a Unit Firm Product for which Seller makes available capacity for Buyer to Schedule and dispatch up or down at Buyer’s option in accordance with Section 3.3([g/h]).]

“Distribution Upgrades” has the meaning set forth in the CAISO Tariff.

“DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

[For Projects located outside of the CAISO: “Dynamic Scheduling Agreement” means the agreement between the CAISO and Buyer or Seller, as Scheduling Coordinator (as applicable), with respect to the duties and responsibilities of the Scheduling Coordinator with respect to facilities located outside the CAISO balancing area and whose product is dynamically transferred via a pseudo-tie to the CAISO, in form and substance reasonably acceptable to the parties thereto./

“Early Termination Date” has the meaning set forth in Section 5.2.

[For all Products other than Dispatchable Product: “Economic Dispatch Down” means curtailment of delivery of Product from the Project that is the result of economic curtailment where Buyer (as the Scheduling Coordinator) or a third party Scheduling Coordinator (in accordance with Buyer’s directions) either submits a self-schedule with a binding Product quantity or an economic bid in the applicable CAISO market or fails to submit any such schedule or bid, in either case, that when implemented by the CAISO results in an otherwise available Product quantity not being scheduled or awarded in such CAISO market and such curtailment is not concurrently the result of a Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.

“Electrical Losses” means all electrical losses associated with the transmission of Product to the Delivery Point, including if applicable, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

“Electrical Interconnection Upgrades” means the facilities to which Seller shall be able to interconnect and deliver Energy from the Project to and at the Delivery Point and Buyer shall be able to transmit Energy from the Delivery Point and the facilities that protect the Participating Transmission Owner’s, Transmission Provider’s, distribution operator’s, ***[For Projects located outside of the CAISO:*** Native Balancing Authority’s,./ or other affected system owner’s, as applicable, electric system (or other systems to which such electric systems are connected, including the CAISO Grid) and the Participating Transmission Owner’s, Transmission Provider’s, distribution operator’s, ***[For Projects located outside of the CAISO:*** Native Balancing Authority’s,./ or other affected system owner’s, as applicable, customers from faults occurring at the Project, including, but not limited to, all network, distribution, connection, transformation, switching, metering, communications, control, and safety equipment, as such equipment may be required pursuant to Good Industry Practices or in accordance with the Participating Transmission Owner’s, Transmission Provider’s, distribution operator’s, ***[For Projects located outside of the CAISO:*** Native Balancing Authority’s,./ or other affected system owner’s, as applicable, facility connection requirements. Such Electrical Interconnection Upgrades include all Network Upgrades, Distribution Upgrades, Interconnection Facilities, and other network upgrades, distribution upgrades, or interconnection facilities ***[For Projects located outside of the CAISO:*** Native Balancing Authority’s, or/ on any other affected system owner’s electrical system that are determined to be necessary by the CAISO, Participating Transmission Owner, ***[For Projects located outside of the CAISO:*** Native Balancing Authority’s, or/ other affected system owner, as applicable, to physically and electrically interconnect the Project to ***[For Projects located outside of the CAISO:*** Native Balancing Authority’s system and/ the Participating Transmission Owner’s electric system so as to allow Seller to deliver Energy from the Project to the Delivery Point and Buyer to be able to transmit Energy from the Delivery Point.

“Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.11, *et seq.*, as amended or supplemented from time to time.

“Energy” means electric energy measured in MWh and net of Station Service (unless otherwise specified).

“Energy Price” has the meaning set forth in Section 4.[1/2](a).

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as Seller’s.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

[For Dispatchable Product only: “Equivalent Availability Factor” or “EAF” has the meaning set forth in Section 4.1(b).]

“Event of Default” has the meaning set forth in Section 5.1.

“Execution Date” means the date hereof as set forth in the preamble of the Cover Sheet.

“Executive(s)” has the meaning set forth in Section 12.2(a).

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or

(iii) except as set forth in subpart (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain Governmental Approvals or other approvals of any type for the construction, operation, or maintenance of the Project;

(iv) a lack of wind, sun or other fuel source of an inherently intermittent nature;

(v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

(vi) Seller's failure to obtain financing or other funds, including funds authorized by a state or the federal government or agencies thereof to supplement the payments made by Buyer pursuant to this Agreement;

(vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project; or

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above.

"Force Majeure Extension Period" has the meaning set forth in Section 3.9(c)(ii).

"Forced Outage" means any unplanned reduction or suspension of production of Product from the Project or unavailability of the Project in whole or in part that is not a Planned Outage or a willful withholding of Product when the Project is otherwise capable of delivering Product under Good Industry Practices.

"GAAP" has the meaning set forth in Section 13.4.

"Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields,

yield curves, volatilities, spreads or other relevant market data in the relevant markets market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent operators of electric transmission facilities (with respect to Buyer) or prudent operators of electric generation facilities similar to the Project (with respect to Seller) in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO *[For Projects located outside of the CAISO: Native Balancing Authority,]* and applicable Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and, with respect to the Seller, shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use, and operation of the Project.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Governmental Charges” has the meaning set forth in Section 9.2.

“Green Attributes” means, subject to the limitations in the final sentence of this definition, any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project and for all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient Green Attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the Project using the biomethane.

"Guaranteed Commercial Operation Date" or "GCOD" means [insert date], as may be extended pursuant to Section 3.9(c)(ii).

"Guaranteed Energy Production" has the meaning set forth in Section 3.1(e).

"Guarantor" means, with respect to Seller, any person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of [] or better from S&P or a Credit Rating of [] or better from Moody's, (d) has a tangible net worth of at least [], (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer substantially in the form attached hereto as Exhibit D. ***[SDG&E will consider accepting a Guaranty based on the Project, the amount of Performance Assurance, and the identity of the Seller and Guarantor]***

"Guaranty" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached hereto as Exhibit D. ***[SDG&E will consider accepting a Guaranty based on the Project, the amount of Performance Assurance, and the identity of the Seller and Guarantor]***

"Imbalance Energy" means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

"Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

[For Projects located outside of the CAISO: “Interconnected Balancing Authority Agreement” means an agreement between the Native Balancing Authority and the CAISO to govern operation of their interconnected electric systems, including the dynamic transfer of Project output via a pseudo-tie from the Native Balancing Authority and the CAISO, in form and substance reasonably acceptable to the parties thereto./

“Interconnection Facilities” has the meaning set forth in the CAISO Tariff.

“Interest Amount” means, with respect to an Interest Period, the amount of interest derived from the product of (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; multiplied by (b) the Interest Rate in effect on the first day of the Interest Period; multiplied by (c) the number of days in that Interest Period; divided by (d) 360.

“Interest Payment Date” means the date on which cash held as Performance Assurance is returned pursuant to the terms of this Agreement.

“Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month or the shorter period during which Performance Assurance in the form of cash is held by Buyer.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (non-financial, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (non-financial, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

“[Large/Small] Generator Interconnection Agreement” has the meaning set forth in the CAISO Tariff.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Governmental Approval, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective prior to the end of the Delivery Term; or any binding interpretation of the foregoing by a Governmental Authority.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [A-] with an outlook designation of “stable” from S&P or [A3] with an outlook designation of “stable” from Moody’s, in substantially the form as contained in Exhibit C to this Agreement.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to

this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

“Locational Marginal Price” has the meaning set forth in the CAISO Tariff.

“Losses” means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction for the remaining term of this Agreement, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

“Manager” has the meaning set forth in Section 12.2(a).

“Milestones” has the meaning set forth in Section 3.9(b)(i).

[For Dispatchable Product only: “Monthly Capacity Payment” has the meaning set forth in Section 4.1(b).]

“Monthly Energy Payment” has the meaning set forth in Section 4.[1/2]([b/c]).

[For Dispatchable Product only: “Monthly Shaping Factor” has the meaning set forth in Section 4.1(b).]

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“MWh” means megawatt-hour.

[For Projects located outside of the CAISO: “Native Balancing Authority” means the balancing authority for the balancing authority area where the Project is physically interconnected to the electric system. As of the Execution Date, the Native Balancing Authority is ***[insert name]***.]

[For Projects located outside of the CAISO: “NBA Generator Agreement” means the agreement between the Native Balancing Authority and Seller with respect to Seller’s obligations to the Native Balancing Authority in connection with the Native Balancing Authority’s duties and obligations under the Interconnected Balancing Authority Agreement, in form and substance reasonably acceptable to the parties thereto./

“Negative Imbalance Energy” has the meaning set forth in Section 4.[2/3].

“NERC” means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

“NERC Holiday” means any of the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Availability Charges” shall mean Non-Availability Charges as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

“Non-Defaulting Party” has the meaning set forth in Section 5.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“Notice to Proceed” or “NTP” means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions precedent to performance of such contract, by which Seller authorizes such EPC Contractor to commence and complete full performance of the work under the EPC Contract without any delay or waiting periods.

“Outage Notification Form” means the completed document from Seller notifying Buyer of an outage of the Project substantially in the form attached hereto as Exhibit G. Buyer reserves the right to reasonably revise or change the form upon Notice to Seller.

[For intermittent As-Available Product: “Participating Intermittent Resource” shall have the meaning set forth in the CAISO Tariff.]

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities that are interconnected to the Delivery Point and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. As of the Execution Date, the Participating Transmission Owner is ***[San Diego Gas & Electric Company]***.

“Party” or “Parties” means the Buyer or Seller individually, or to both collectively.

[For Peaking Product only: “Peaking” means a Unit-Firm Product for which Energy must be delivered during hours ending 1200-1900 (11:00 am to 7:00 pm) on Monday-Friday, excluding NERC Holidays, for the months July through October and during hours ending 1400-2100 (1:00 pm to 9:00 pm) on Monday-Friday, excluding NERC Holidays, for the months November and December.] [Note: Buyer will consider other firm products such as 6x16: “6x16 Block” means

a Unit-Firm Product for which Energy must be delivered during hours ending 0700-2200 (6:00 am to 10:00 pm) on Monday-Saturday throughout the Delivery Term.]

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes ***[For Agreements with Delivery Terms greater than two years: CPUC Approval Security,] Development Period Security, Construction Period Security, and Delivery Term Security.***

[For As-Available, Baseload, Peaking Product: “Performance Measurement Period” has the meaning set forth in Section 3.1(e).]

“Planned Outage” means any planned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part as a result of the inspection, maintenance, or repair of equipment that is scheduled in accordance with Section 3.7(a).

“PNode” has the meaning set forth in the CAISO Tariff.

“Positive Imbalance Energy” has the meaning set forth in Section 4.[2/3].

“Product” has the meaning set forth in Section 3.1(a).

[For Projects receiving PTCs: “Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended from time to time./

“Project” means all of the *[insert technology]* electric generating units, the Site at which the generating facility is located, the utility interconnection facilities up to the point of change in ownership to the applicable utility’s facilities, and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Exhibit A.

“Project Cure Period” has the meaning set forth in Section 3.9(c)(i).

“Qualified Assignee” has the meaning set forth in Section 13.2.

“Quarterly Progress Report” means the report similar in form and content attached hereto as Exhibit F, as may be modified from time to time to meet applicable CPUC requirements.

[For Projects located outside of the CAISO: “Pseudo Participating Generator Agreement” means an agreement between CAISO and Seller that is the equivalent of a Participating Generator Agreement (as defined in the CAISO Tariff) for generators interconnected to a Native Balancing Authority other than CAISO and whose output is dynamically transferred via a pseudo-tie to the CAISO, in form and substance reasonably acceptable to the parties thereto./

[For Projects located outside of the CAISO: “Pseudo Tie Agreements” means the Interconnected Balancing Authority Agreement, the Dynamic Scheduling Agreement, the Pseudo Participating Generator Agreement, and the NBA Generator Agreement, or equivalent agreements that may be adopted by the CAISO or included in the CAISO Tariff, which are intended to permit and facilitate the dynamic transfer of the output of the Project via a pseudo-tie from its Native Balancing Authority to the CAISO./

“Recording” has the meaning set forth in Section 13.6.

“Reductions” has the meaning set forth in Section 3.2(c).

“Referral Date” has the meaning set forth in Section 12.2(a).

“Remedial Action Plan” has the meaning provided in Section 3.9(b)(ii).

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

“Renewable Generation Equipment Supplier” means the supplier of the [electric generating [wind] [gas] [steam] turbine(s)] [solar electric generating equipment] for the Project, selected by Seller.

“Replacement Price” means the price (in dollars per megawatt hour) at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) a replacement for any Product (including its associated Green Attributes) that was not Scheduled and delivered by Seller, plus (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Buyer in purchasing such replacement Product and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Buyer for such replacement Product, or absent a purchase, the market price at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) for such replacement Product for the hours impacted by such failure to Schedule or deliver such Product as determined by Buyer in a commercially reasonable manner. The Replacement Price also shall include all CAISO *[For Projects located outside of the CAISO: , Native Balancing Authority,]* and other charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the Scheduled supply resulting from Seller’s failure to Schedule or deliver; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party. If for any reason a Replacement Price is unavailable when Seller fails to deliver or Schedule Product, then the Replacement Price for the hours when a Replacement Price is unavailable shall be the last available Replacement Price together with any charges and penalties allocated to Buyer during such time.

“Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

“Sales Price” means the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner, resells any Product not Scheduled and received by Buyer,

deducting from such proceeds any (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO *[For Projects located outside of the CAISO: and the Native Balancing Authority,]* to Schedule and deliver the Product into the CAISO System *[For Projects located outside of the CAISO: or the Native Balancing Authority's system]*, and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or absent a sale despite commercially reasonable efforts to resell the Product, zero. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer's failure to take Product and calculated in dollars per megawatt hour; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. The Sales Price may be less than zero.

"S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

"Schedule" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time-to-time.

"Scheduled Energy" means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices.

"SEC" means the U.S. Securities and Exchange Commission.

"Seller" shall have the meaning set forth on the Cover Sheet.

"Settlement Amount" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Sections 5.2 and 5.3.

"Site" shall mean the location of the Project as described in Exhibit A.

"Station Service" means the electric energy produced by the Project that is used within the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project.

"System Dispatch Down" means curtailment of delivery of Product from the Project resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited

to, an Exceptional Dispatch (as defined in the CAISO Tariff), any system emergency as defined in the CAISO Tariff (“System Emergency”), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO’s or Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected, any warning, forecast, or anticipated overgeneration conditions, including a request from CAISO to manage over-generation conditions; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner’s transmission facilities or distribution operator’s facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Delivery Point, (d) curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator, ***[If the Project is located outside of the CAISO: or Native Balancing Authority; or (e) curtailment ordered by the Transmission Provider provided, that Seller has contracted for firm transmission with such Transmission Provider for the Product to be delivered to the Delivery Point and such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff]; [For Dispatchable Product only: or ([e/f]) curtailment ordered by Buyer pursuant to a Dispatch Notice.] [For all Products other than Dispatchable: provided, however, that System Dispatch Down shall not include Economic Dispatch Down].***

“Terminated Transaction” means the termination of this Agreement in accordance with Section 5.2 of this Agreement.

“Termination Payment” has the meaning set forth in Section 5.2.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

[For Baseload, Peaking, or Dispatchable Product only: “Unit Firm” means, with respect to a Product, that the Product is intended to be supplied from the Project, and subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

- (a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller’s negligence or willful misconduct;
- (b) Force Majeure;
- (c) by the Buyer’s failure to perform;

(d) by a Planned Outage of the Project; or

(e) a reduction in output as ordered under Dispatch Down Periods.

The following products shall be considered “Unit Firm” products: Peaking, Baseload, and Dispatchable.]

[For an intermittent As-Available Product only: “VER Forecasting Program” means the rules, protocols, procedures and standards for Participating Intermittent Resources under the CAISO’s Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.]

“WECC” means the Western Electricity Coordinating Council or successor agency.

“WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.2 Interpretation. The following rules of interpretation shall apply:

- (a) The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.
- (b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies.
- (c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article 1, unless otherwise specified.
- (d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.
- (e) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- (f) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise,

be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

- (g) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.
- (h) All references to dollars are to U.S. dollars.

ARTICLE 2: EFFECTIVENESS OF AGREEMENT; CONDITIONS PRECEDENT

2.1 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Execution Date until the CP Satisfaction Date, this Agreement shall be in full force and effect, enforceable and binding only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under this Article 2, including, as it relates to Article 2, the rights and obligations under Articles 1, 5, 7, 8, 9, 10, 11, 12, and 13.

2.2 Obligations of the Parties. The Parties shall cooperate with each other to cause the Conditions Precedent to be satisfied as soon as reasonably practical.

- (a) Seller's Obligations. Prior to the CP Satisfaction Date, Seller shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Sections [____], (ii) diligently pursue development of the Project in accordance with Section 3.9, (iii) comply with Section 3.9(b) in achieving the applicable Milestones that have due dates occurring prior to the CP Satisfaction Date, reporting completion of such Milestones, and delivering Remedial Action Plans in respect of missed Milestones as more fully described therein, (iv) deliver the Quarterly Progress Report in accordance with Section 3.9(a), and (v) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. ***[For Agreements with Delivery Terms greater than two years:*** Upon an Event of Default of Seller prior to the CPUC Approval Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the CPUC Approval Security.] Upon an Event of Default of Seller ***[For Agreements with Delivery Terms greater than two years:*** on or after the CPUC Approval Date but] prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the Development Period Security. Buyer may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Seller prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to the CP Satisfaction Date.

- (b) Buyer's Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Sections 2.3(a), and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. ***[For Agreements with Delivery Terms greater than two years:*** Upon an Event of Default of Buyer prior to the CPUC Approval Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the CPUC Approval Security.] Upon an Event of Default of Buyer ***[For Agreements with Delivery Terms greater than two years:*** on or after the CPUC Approval Date but] prior to the CP Satisfaction Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the Development Period Security. Each Party agrees and acknowledges that (a) the actual damages that Seller would incur due to an Event of Default of Buyer prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Buyer prior to the CP Satisfaction Date.

2.3 Conditions Precedent. Subject to Section 2.1, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.4) of all of the following conditions precedent ("Conditions Precedent") by the deadline dates set forth below for each Condition Precedent without extension for Force Majeure or any other reason:

- (a) CPUC Approval. No later than [_____], Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement but with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking CPUC Approval therefor. If, no later than the earlier of (i) sixty (60) days after such order or (ii) the deadline date above, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.
- (b) Electrical Interconnection. No later than [_____], Seller shall have entered into a [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement ***[For Projects located outside of the CAISO:*** along with any supplemental arrangements with the CAISO as an affected system owner] providing for the construction of the Electrical Interconnection Upgrades necessary to maintain the "[Full Capacity] [Energy Only] Deliverability Status" (as defined in the CAISO Tariff) of the Project and setting forth:
- (i) an estimated in-service interconnection date for the "Participating TO's Interconnection Facilities," the "Network Upgrades," and the "Distribution Upgrades" (as each term is defined in the CAISO Tariff) of no later than [_____] months after Seller

provides the Participating Transmission Owner with the appropriate security and written authorization to proceed under its [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement for the Project ***[For Projects located outside of the CAISO: and its supplemental arrangements with the CAISO as an affected system owner]***,

- (ii) a refundable cost for “Network Upgrades” (as defined in the CAISO Tariff) that Seller would be obligated to pay and would be entitled to reimbursement from the CAISO, a Participating Transmission Owner, or any other affected transmission provider as provided thereunder not exceeding \$[_____], and ***[Note: Seller may propose additional provisions whereby Seller can satisfy this Condition Precedent by buying down the Network Upgrade costs that exceed the foregoing cost cap in a manner that is mutually acceptable to the Parties.]***
- (iii) a nonrefundable cost that Seller would be obligated to pay thereunder not exceeding \$[_____] (or such greater amount as Seller may approve, in its sole discretion).

(c) ***[Others, Major Governmental Approvals, Financing, etc.]***

2.4 Failure to Meet All Conditions Precedent.

(a) Beneficiary Party.

- (i) Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Sections 2.3(a), 2.3(b)(i)-(ii) ***[Others]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, both of the Parties must waive (in their sole discretion) non-satisfaction by the deadline date therefor.
- (ii) Buyer shall be the sole beneficiary of the Conditions Precedent set forth in Sections ***[List]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Buyer alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.
- (iii) Seller shall be the sole beneficiary of the Conditions Precedent set forth in Sections 2.3(b)(iii) ***[Others]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

- (b) Termination. If any of the Conditions Precedent is not satisfied or waived in writing by the beneficiary Parties thereto on or before the date that is fifteen (15) days after the applicable deadline date therefor, then this Agreement shall automatically terminate with no further obligation

to either Party (other than as set forth in Sections 2.4(b)(i)-(ii) below and any other payment obligations which are accrued and payable at the time of termination).

- (i) Upon a termination of this Agreement for any reason under Section 2.4 other than as described in Section 2.4(b)(ii) below, Seller shall forfeit to Buyer an amount equal to the Performance Assurance then required to be delivered to Buyer hereunder. Buyer may retain such Performance Assurance to pay such amount.
- (ii) Upon a termination of this Agreement under this Section 2.4 as a result of the failure of the Conditions Precedent set forth in Sections 2.3(a) to be satisfied (or waived by both Parties) or as a result of the failure of the Conditions Precedent set forth in Sections 2.3(b)(i)-(ii) to be satisfied or waived by Buyer, Buyer shall return to Seller the Performance Assurances then held by Buyer.

2.5 Effectiveness of Agreement on and after CP Satisfaction Date. This Agreement shall be in full force and effect, enforceable and binding in all respects as of the CP Satisfaction Date until the conclusion of the Delivery Term or earlier termination pursuant to the terms of this Agreement; provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for the Product delivered prior to the end of the Delivery Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the *[For Agreements with Delivery Terms greater than two years: CPUC Approval Security,] Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due).* All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation.

ARTICLE 3: OBLIGATIONS AND DELIVERIES

3.1 Transaction.

- (a) Product. The “Product” to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is *[Seller to select: As-Available, Baseload, Peaking, or Dispatchable]* Energy, Capacity Attributes, Green Attributes, and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project (net of Station Service) in accordance with the terms hereof.
- (b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for the Product in accordance with the terms hereof. **In no event shall Seller have the right to procure any element of the Product from sources other**

than the Project for sale or delivery to Buyer under this Agreement *[If the Project is located outside of the CAISO: except with respect to Imbalance Energy from the Transmission Provider]*.

- (c) **Delivery Term.** The Parties agree that the period of Product delivery is [] Contract Years. As used herein, “Delivery Term” shall mean the period of Contract Years specified above beginning on the Commercial Operation Date and continuing until the end of the last Contract Year unless terminated earlier as provided by the terms of this Agreement.
- (d) **Delivery Point.** The Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid] *[For Projects located outside of the CAISO, insert: “The Delivery Point shall be the point on the CAISO Grid where the Native Balancing Authority’s grid is interconnected to the CAISO Grid at the [identify the local CAISO substation to which the Project has firm transmission rights] Substation (and, for payment purposes, the corresponding PNode for the Project, or if none exists, the PNode corresponding to the point on the CAISO Grid where the Native Balancing Authority’s grid is interconnected to the CAISO Grid at the Delivery Point).”]* The Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid] *[Seller may specify another delivery point; for a Project located outside the CAISO Grid, the Delivery Point should be a CAISO Scheduling Point as defined by the CAISO]* and for financial settlement purposes under the applicable CAISO market, the PNode corresponding to such point.
- (e) *[For Baseload, Peaking, As-Available Product: Contract Quantity and Guaranteed Energy Production.* The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer during each Contract Year is [] MWh (“Contract Quantity”). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any [twelve (12)] [twenty-four (24)] consecutive calendar month period during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Bundled Green Energy, as measured in MWh, equal to [two times] []% of the Contract Quantity. Notwithstanding the excuses to performance set forth in the definition of the Product type (as such Product type is specified in Section 3.1(a)), Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer’s failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer an amount of Bundled Green Energy that it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer’s failure to perform, or Dispatch Down Periods.] *[For Dispatchable Product: Contact Quantity.* The quantity of Bundled Green Energy that Seller expects to

be able to deliver to Buyer during each Contract Year is [_____] MWh (“Contract Quantity”).]

- (f) Contract Capacity. The “Contract Capacity” is the full generation capacity of the Project net of all Station Service which shall be *[For As-Available Product: no less than [_____] MW and no greater than [_____] MW] [For Baseload, Peaking, or Dispatchable Product only: an amount determined periodically pursuant to a Capacity Test as set forth below]*. Throughout the Delivery Term, Seller shall sell and Schedule all Product associated with the Contract Capacity of the Project solely to Buyer, except in the case of an Event of Default of Buyer *[If the Project is located outside of the CAISO: or the sale of Imbalance Energy to the Transmission Provider]*. *[For Dispatchable Product: Throughout the Delivery Term, Seller shall make the Contract Capacity available solely to Buyer at all times, except in the case of an Event of Default of Buyer [If the Project is located outside of the CAISO: or the sale of Imbalance Energy to the Transmission Provider].]*
- (i) *[For Baseload, Peaking, Dispatchable Product: Initial Capacity Testing*. Upon no less than fourteen (14) days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test prior to the Commercial Operation Date for the Project. Such initial Capacity Test shall establish the Contract Capacity for the Project for the first Contract Year.]
- (ii) *[For Baseload, Peaking, Dispatchable Product: Annual Capacity Testing*. Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than 14 days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon five (5) days prior written Notice to Seller if Buyer reasonably believes that the actual Contract Capacity has varied materially from the results of the most recent tests. Seller shall have the right to run a retest of the Capacity Test at any time upon two (2) days prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Good Industry Practices).]
- (iii) *[For Baseload, Peaking, Dispatchable Product: Witness at Capacity Tests*. Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.]
- (iv) *[For Baseload, Peaking, Dispatchable Product: Capacity Test Reporting*. No later than fourteen (14) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Project. The Contract Capacity determined pursuant to a Capacity Test shall become the new Contract Capacity at the beginning of

the day following the completion of the test for all purposes under this Agreement.]

- (v) ***[For Baseload, Peaking, Dispatchable Product: Capacity Test Costs and Payments.*** Buyer shall pay the [Monthly Energy Payment] in respect of the Product produced during the initial Capacity Test prior to the Commercial Operation Date and each annually scheduled Capacity Test thereafter. In addition, Buyer shall pay the [Monthly Energy Payment] in respect of the Product produced during any other Buyer requested test unless the results of such test demonstrate that the actual Contract Capacity has varied by more than two percent (2%) from the results of the most recent tests, in which case Buyer shall pay the lesser of the [Monthly Energy Payment] in respect of the Product produced during such test and the applicable CAISO real-time hourly average energy price. In addition, Buyer shall pay the lesser of the [Monthly Energy Payment] in respect of the Product produced during any Seller requested test and the applicable CAISO real-time hourly average energy price]. Buyer is responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing Capacity Testing. All other costs of any Capacity Tests shall be borne by Seller.]
- (g) **Project.** All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only ***[If the Project is located outside of the CAISO:*** except with respect to Imbalance Energy from the Transmission Provider]. Other than maintenance in accordance with Good Industry Practices, Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project or any other material changes to the Project without Buyer's prior written consent. The Project is further described in Exhibit A.
- (h) **Performance Excuses.**
 - (i) **Seller Excuses.** The performance of Seller to Schedule, deliver, and sell the Product shall be excused only for the reasons set forth in the definition of ***[Seller to select: "As-Available" or "Unit Firm"]***. If Seller fails to Schedule, deliver, or sell all or part of the Product, and such failure is not excused as described above, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (A) the product of the Energy Price
 - (ii) **Buyer Excuses.** The performance of Buyer to Schedule, receive, and pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform or (C) during Dispatch Down Periods ***[For all Products other than Dispatchable Product:*** (except that Buyer shall not be excused from paying for

the Product as required under Section 3.4 during periods of Economic Dispatch Down)). If Buyer fails to Schedule, receive, or purchase all or part of the Product and such failure is not excused as described above, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (Y) the product of the Sales Price times the Product deficiency from (Z) the product of the Energy Price times the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

- (i) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project. For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.
- (j) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project for Buyer to use in meeting its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe. Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Seller agrees that it shall take all commercially reasonable actions and

execute any and all documents or instruments reasonably necessary to enable Buyer to use all of the Contract Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement for the Resource Adequacy requirements of Buyer, including for necessary deliverability Network Upgrades. Seller agrees that the Project is subject to the terms of the Availability Standards. ***[For Projects located outside of the CAISO, insert:*** Seller acknowledges that in order for the Project, as a generator that is dynamically transferred via a pseudo-tie to the CAISO, to qualify its Capacity Attributes as Resource Adequacy capacity, Seller will need, among other things, to maintain firm transmission service to the Delivery Point or equivalent arrangements, to maintain as effective the Pseudo-Tie Agreements, to establish a “Qualifying Capacity” (or its equivalent) periodically with the CPUC, to establish a “Net Qualifying Capacity” (or its equivalent) periodically with the CAISO, and to submit through Seller’s Scheduling Coordinator a Resource Adequacy supply plan periodically to the CAISO. Seller acknowledges that (i) Buyer may allocate its share of import capability on the CAISO Grid to any CAISO import scheduling point on the CAISO Grid as it deems appropriate in its sole discretion, and (ii) Buyer may allocate its share, if any, of import capability at the CAISO import scheduling point corresponding to the Delivery Point to any resource at such CAISO import scheduling point as it deems appropriate in its sole discretion, even if, in either case, Buyer’s allocation of such import capability, if any, to the CAISO import scheduling point corresponding to the Delivery Point or to the Project may not be sufficient for the Capacity Attributes from the Project to be accepted and approved by the CPUC and the CAISO as qualifying for the determination of, and as satisfying Buyer’s requirement for demonstrating its procurement of, Resource Adequacy capacity. If there are determined to be deliverability Network Upgrade costs on the CAISO Grid as an affected system of the Native Balancing Authority as a result of this Project, Buyer can request that Seller elect to fund or elect not to fund all deliverability Network Upgrades. If Seller elects to fund any such deliverability Network Upgrades after Buyer’s request that Seller not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If Buyer requests that Seller fund certain deliverability Network Upgrades, but Seller does not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If the Seller is required to provide Resource Adequacy hereunder, Seller agrees that the Project is subject to the terms of the Availability Standards./

- (k) WREGIS. Prior to the initial delivery of Energy to Buyer, Seller shall register the Project in WREGIS, execute a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Seller’s behalf, to upload generation information directly into WREGIS, and take all other actions necessary to ensure that the Green Attributes produced from the

Project in an amount equal to the amount of Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.

- (l) Prevailing Wage. To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.13, subdivision (h).

3.2 Transmission.

- (a) Seller's Transmission Service Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service for delivery of the Product to and at the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods. *[For Projects located outside of CAISO:* Seller shall obtain and maintain during the Delivery Term firm transmission service to deliver the Product from the Site to the Delivery Point from all intermediary Transmission Providers between the Site and the Delivery Point. At Buyer's request, Seller shall provide to Buyer a copy of all firm transmission service agreements and any amendments thereto.] Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in *[For Projects located outside of CAISO:* the Native Balancing Authority's applicable tariffs, Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement and Meter Service Agreement *[For Projects located outside of CAISO:* (or equivalent arrangements (such as a Pseudo-Participating Generator Agreement) for projects located outside the CAISO whose output is dynamically transferred via a pseudo-tie to the CAISO)] so as to be able to deliver Energy to the CAISO Grid. *[For Project located within the CAISO:* Seller shall arrange for any interconnection agreement with the CAISO (or the Participating Transmission Owner, for distribution level interconnections).] *[For Projects located outside of CAISO:* Seller shall arrange for and maintain, or cause to be maintained, during the Delivery Term appropriate interconnection agreements with the Native Balancing Authority and appropriate Pseudo Tie Agreements among the parties thereto that permit and facilitate the dynamic transfer of the output of the Project via a pseudo-tie from the Native Balancing Authority to the CAISO.] Any and

such interconnection agreement is separate and not a part of this Agreement.

- (b) Buyer's Transmission Service Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service for delivery of the Product from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods.
- (c) Congestion Charges. Seller shall be responsible for all costs of congestion for transmission of the Product up to and at the Delivery Point. Buyer shall be responsible for all costs of congestion for transmission of the Product from the Delivery Point. To the extent that Seller is reimbursed for or receives any refunds, credits, or benefits from the CAISO for congestion charges or losses in respect of transmission of the Product from the Delivery Point, whether due to differences between the locational marginal pricing at the Delivery Point and Buyer's load aggregation point or any other point downstream of the Delivery Point, congestion revenue rights associated with any transmission path downstream of the Delivery Point, or any other hedging instruments associated with the transmission of the Product from the Delivery Point (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

3.3 Scheduling.

- (a) *[For As-Available intermittent Product only: VER Forecasting Program Requirements.* Seller shall cause the Project to become a Participating Intermittent Resource including executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Project becoming a Participating Intermittent Resource and participating in the VER Forecasting Program. Seller and Buyer shall comply with the VER Forecasting Program, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the VER Forecasting Program, for the Delivery Term. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource prior to the Commercial Operation Date. In the event that the VER Forecasting Program or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement

such revisions in a manner that maintains the relative economic positions of the Parties as of the date of this Agreement.]

(b) Scheduling Coordinator.

[When Seller is SC for the Project, include the following two paragraphs:

- (i) Seller as Scheduling Coordinator for the Project. During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and deliver the Product to the Delivery Point and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and receive the Product at the Delivery Point. Throughout the Delivery Term, Buyer and Seller shall submit inter-SC trades for scheduling all Product from the Project at the Delivery Point (including Energy, Integrated Forward Market Load Uplift Obligations in respect of self-scheduled Energy, and other Product from time to time contemplated under the CAISO Tariff to be subject to inter-SC trades), based on a final Schedule developed in compliance with this Agreement. During the Delivery Term, each Party or each Party's SC shall conduct all Scheduling in accordance with the operating procedures developed by the Parties pursuant to Section 3.10 and in full compliance with the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. ***[For As-Available intermittent Product only:*** Whenever the VER Forecasting Program is available, Seller shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with the VER Forecasting Program.] In all cases, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,] Buyer may direct the Scheduling Coordinator to submit, and Seller shall cause the Scheduling Coordinator to submit in accordance with such Buyer's directions, a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO. It is the intent of the Parties that neither Party be subject to a double payment or a double charge for Product from the Project through this Agreement and CAISO settlement process and that the more detailed Scheduling and operating procedures developed pursuant to Section 3.10 complement the CAISO settlement process to produce a final economic result between them that is consistent with the fundamental transaction of this Agreement.
- (ii) CAISO Costs and Revenues. Seller shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) as

the Scheduling Coordinator for the Project, in each case, associated with Imbalance Energy, including all CAISO charges or penalties incurred as a consequence of the Project not being available, the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and any other deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Project not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of the sanctions or penalties shall be the Seller's responsibility. Buyer shall be entitled to all credits, payments, or revenues from the CAISO in respect of the Product Scheduled or delivered from the Project, including revenues associated with CAISO dispatches, inter-SC trade credits, and bid cost recovery.

[When SDG&E is SC for the Project, include the following seven paragraphs:]

- (iii) Buyer as Scheduling Coordinator for the Project. [During the Delivery Term] [Upon initial synchronization of the Project to the CAISO Grid], Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Project for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the [Commercial Operation Date of the Project] [initial synchronization of the Project to the CAISO Grid], Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Project effective as of [the beginning of the Delivery Term] [initial synchronization of the Project to the CAISO Grid]. [During the Delivery Term] [On and after initial synchronization of the Project to the CAISO Grid], Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices

for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. *[For As-Available intermittent Product only:* Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with the VER Forecasting Program whenever the VER Forecasting Program is available, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever the VER Forecasting Program is not available.] In all cases, *[For all Products other than Dispatchable:* consistent with its Economic Dispatch Down curtailment rights,] Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO.

- (iv) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Project's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. In accordance with Section 3.7 and this Section 3.2, Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.
- (v) CAISO Costs and Revenues. Except as otherwise set forth below, *[For all Products other than Dispatchable Product:* in Section 3.4(c)(ii),] and elsewhere in this Agreement, Buyer (as Seller's SC) shall be responsible for CAISO costs (including penalties, *[For As-Available Product VER Forecasting Program Participants only:* Negative Imbalance Energy costs or revenues,] and other charges) and shall be entitled to all CAISO revenues (including credits, *[For As-Available Product VER Forecasting Program Participants only:* Positive Imbalance Energy revenues or costs,] and other payments) as the Scheduling Coordinator for the Project, including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project. *[For As-Available Product VER Forecasting Program Participants only:* Seller shall be responsible for all CAISO charges or penalties net of credits and payments (including without limitation all Imbalance Energy costs), in each case, resulting from the Seller not notifying the CAISO and Buyer (as Seller's SC) of outages or other unavailability of Project capacity in a timely manner (in accordance

with the CAISO Tariff and as set forth in Section 3.7) or any other failure by Seller to abide by the CAISO Tariff.] ***[For all Products other than As-Available Product VER Forecasting Program Participants:*** Seller shall be responsible for all CAISO charges or penalties net of credits and payments, in each case, resulting from the Project not being available, the Seller not notifying the CAISO and Buyer (as Seller's SC) of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties.] The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Project not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Project or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

- (vi) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.
- (vii) Dispute Costs. Buyer (as Seller's SC) may be required to dispute CAISO settlements in respect of the Project. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees, including reasonably allocated costs of in-house counsel of the

Buyer) associated with its involvement with such CAISO disputes. In no event shall Buyer (or its third party designee, as Scheduling Coordinator) be liable to Seller for the actions, inactions, errors, or omissions of the CAISO or its agents in the performance of their scheduling functions and/or market operations.

- (viii) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Project as of 11:59 p.m. on such expiration date.
- (ix) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for this Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.]
- (c) Annual Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year.
- (d) Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Delivered Energy, by hour, for the following month ("Monthly Delivery Forecast").
- (e) Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall *[When Seller is SC for the Project: cause its Scheduling Coordinator to]* provide Buyer with a *[For As-Available intermittent Product only: non-binding forecast of the Project's available capacity (or if the VER Forecasting Program is not available for any reason, the expected Delivered Energy)] [For all Products other than As-Available intermittent: binding forecast of the expected Delivered Energy]* for each hour of the immediately succeeding day ("Day-Ahead Forecast") *[For all Products other than As-Available intermittent: [When Seller is SC for the Project: concurrent with delivery to the CAISO] [When SDGE is SC for the Project: and Buyer shall submit a Schedule to the CAISO consistent with such Day-Ahead Forecast], it being understood that, [For all Products other than Dispatchable: consistent with its Economic Dispatch Down curtailment rights,]* Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable CAISO

market in order to Schedule the Product with the CAISO]. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of ***[For As-Available intermittent Product only:*** the Project's available capacity (or if the VER Forecasting Program is not available for any reason, the expected Delivered Energy)] ***[For all Products other than As-Available intermittent:*** the expected Delivered Energy]. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

- (f) Real Time Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Section 3.7. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Project during or after the end of the outage.
- (g) ***[For Dispatchable Product Only:*** Availability Notices. During the Delivery Term, no later than two (2) Business Days before each Schedule day for the day-ahead market in accordance with WECC scheduling practices, Seller shall provide Buyer with an hourly Schedule of the capacity that the Project is expected to have available for each hour of such Schedule day (the "Availability Notice"). Seller will notify Buyer immediately if the available capacity of the Project may change after Buyer's receipt of an Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices. Seller shall provide Availability Notices using the form developed by the Parties under Section 3.10 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.]
- (h) ***[For Dispatchable Product Only:*** Dispatch Notices. Buyer or the CAISO will have the right to dispatch the Project, seven days per week

and 24 hours per day (including holidays), by providing Dispatch Notices and updated Dispatch Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the system requirements under Section 3.4(b) and the Project operating restrictions set forth in Exhibit H. Each Dispatch Notice will be effective unless and until Buyer modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices and updated Dispatch Notices will be made in accordance with the timelines as specified in the CAISO Tariff.]

3.4 Dispatch Notices.

- (a) General. Seller shall reduce delivery amounts as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period.
- (b) System Requirements. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary (i) for Seller to respond and follow instructions, including an electronic signal conveying real time instructions, to operate the Project as directed by the Buyer and/or the CAISO, including to implement a System Dispatch Down or an Economic Dispatch Down in accordance with the then-current methodology used to transmit such instructions as it may change from time to time, and (ii) for Buyer and/or the CAISO to control the quantity of Product generated by the Project in order to implement a System Dispatch Down or an Economic Dispatch Down, in each case, in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. As of the Execution Date, the systems required to comply with clause (i) include at a minimum the CAISO's Automatic Dispatch System (as described in the CAISO website) and the systems required to comply with clause (ii) include at a minimum the CAISO's Application Programming Interfaces (as described in the CAISO website). If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all commercially reasonable steps necessary to become compliant as soon as possible. Seller shall be liable pursuant to Section *[For all Products other than Dispatchable Product: 3.4(c)(ii)] [For Dispatchable Product: 3.3(b)[(ii)/(iii)]]* for failure to comply with an order directing a Dispatch Down Period, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, an order directing a Dispatch Down Period via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If an electronic submittal is not possible, Buyer and/or the CAISO may provide Dispatch Notices by (in order of preference) electronic mail, telephonically, or

facsimile transmission to Seller's personnel designated to receive such communications, as provided by Seller in writing and Seller shall maintain communications systems necessary to permit such transmittal of Dispatch Notices. The Parties shall describe with more specificity the Economic Dispatch Down process (including the automated communication process for Dispatch Notices) in the operating procedures developed by the Parties pursuant to Section 3.10.

- (c) ***[For all Products other than Dispatchable Product: Economic Dispatch Down.*** Each of Buyer and the CAISO has the right to order Seller to curtail deliveries of Energy from the Project to the Delivery Point for Economic Dispatch Down purposes, seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and updated Dispatch Notices to Seller electronically via the communications systems described in Section 3.4(b), subject to the requirements and limitations set forth in this Agreement, including the Project operating restrictions set forth in Exhibit H. Each Dispatch Notice will be effective unless and until Buyer (or the CAISO) modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices and updated Dispatch Notices will be made in accordance with the timelines as specified in the CAISO Tariff. Seller agrees to adjust the Project's Delivered Energy as set forth in a Dispatch Notice that meets the requirements of Economic Dispatch Down.]
- (i) **[Buyer Payments.** Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such Economic Dispatch Down occurred an amount equal to the positive difference, if any, of (Y) the product of the Energy Price, times, minus (Z) the product of the positive value of the Sales Price, if received, times the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down.
- (ii) **[Failure to Comply.** If Seller fails to comply with a Dispatch Notice that is in compliance with this Agreement, then, for the deviation between the Delivered Energy and the amount set forth in the Dispatch Notice, Seller shall pay Buyer an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for any Delivered Energy in excess of the amount set forth in the Dispatch Notice (for example, the Energy Price adjusted by TOD Factors), and (B) is all Imbalance Energy costs or charges (excluding any revenues or credits), and (C) is any penalties or other charges resulting from Seller's failure to comply with the Dispatch Notice.]

3.5 Standards of Care.

- (a) **General Operation.** Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including

those related to safety, construction, ownership and/or operation of the Project).

- (b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Industry Practices.
- (c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities," and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

3.6 Metering.

- (a) CAISO Revenue Meter. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment reasonably necessary to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO meter reporting website and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.
- (i) Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Good Industry Practice and the CAISO Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.

- (ii) Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement, deliveries shall be measured by reference to Seller's check-meters, if any are installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.
 - (iii) Delivered MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate under the Meter Service Agreement, the Delivered Energy is increased or decreased, the revised Delivered Energy shall be used for purposes of calculating payments. If any of such amounts for any period have already been calculated using the previous amount of Delivered Energy, they shall be recalculated using the revised amount of Delivered Energy. If the recalculation changes the amount payable for the period in question, revised payments shall be made by Buyer or Seller, as applicable, in accordance with Section 6.2.
- (b) Real Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Project in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.
- (c) ***[The following section is for As-Available Intermittent Products only]*** Meteorological Station. Seller, at its own expense, shall install and maintain such stand-alone meteorological stations at the Project as may be required under the VER Forecasting Program and the CAISO Tariff to monitor and report weather data to both the CAISO and Buyer's weather station data collection system. Each station shall be equipped with instruments and equipment that meet the specifications of the VER Forecasting Program and shall measure, collect, record, format, and communicate the data required under the VER Forecasting Program. Seller shall submit to Buyer for review and approval, which shall not be unreasonably withheld, its technical specifications for the meteorological station along with a site plan showing the location of the station within the Project. Seller shall correct any problems with such equipment as soon as practicable.

3.7 Outage Notification.

- (a) Planned Outages. Seller shall schedule Planned Outages for the Project in accordance with Good Industry Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. The Parties acknowledge that in all circumstances, Good Industry Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Buyer shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its best efforts in accordance with Good Industry Practices to accommodate Buyer's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed Outage Notification Form to Buyer no later than fourteen (14) days prior to each Planned Outage and all appropriate outage information or requests to the CAISO in accordance with the CAISO Tariff. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Industry Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall use its best efforts in accordance with Good Industry Practices not to schedule Planned Outages during the months of July, August, September and October. At Buyer's request, Seller shall use commercially reasonable efforts to reschedule Planned Outage so that it may deliver Product during CAISO declared or threatened emergency periods. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.
- (b) Forced Outages. Within ***[When Seller is the SC for the Project: Within two hours of any Forced Outage,] [When SDG&E is the SC for the Project: Within one-half of the notification time prescribed under the CAISO Tariff for Forced Outages,]*** Seller shall submit a completed Outage Notification Form to the Buyer in accordance with the instructions shown on the form and shall submit outage information to the CAISO in accordance with the CAISO Tariff ***[When SDG&E is the SC for the Project: and Section 3.3(b)(ii) above].*** Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage.
- (c) Coordination with CAISO. Seller shall be responsible ***[When SDG&E is SC for the Project: in accordance with Section 3.3(b)(ii)]*** for all outage coordination communications with the CAISO. Buyer shall cooperate

with Seller in arranging and coordinating all Project outages with the CAISO.

3.8 Operations Logs and Access Rights.

- (a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to Buyer within one day of Buyer's request.
- (b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement.

3.9 New Generation Facility.

- (a) Project Development. Seller, at no cost to Buyer, shall:
 - (i) Design and construct the Project.
 - (ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Electrical Interconnection Upgrades to Schedule and deliver the Product from the Project [***For Projects Providing Resource Adequacy:*** under "Full Capacity Deliverability Status" (as defined in the CAISO Tariff)]. Following satisfaction or waiver of the Conditions Precedent set forth in Section 2.3(b), Seller shall not request from the CAISO or the Participating Transmission Owner any changes to its plan of interconnection that are inconsistent with the plan of interconnection that was evaluated in connection with the satisfaction or waiver of the Conditions Precedent in Section 2.3(b) without Buyer's prior written consent.
 - (iii) Acquire all Governmental Approvals and other approvals necessary for the construction, operation, and maintenance of the Project.
 - (iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project, including all environmental analysis required under the California

Environmental Quality Act for the Project and related interconnection facilities.

- (v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project.
- (vi) Within fifteen (15) days after the close of each calendar quarter following the Execution Date until the Commercial Operation Date, provide to Buyer a Quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The Quarterly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.
- (vii) Provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.
- (viii) At Buyer's request, provide information to Buyer relating to Seller's or Seller's contractor's use, during Project construction, of "Women-Owned Businesses" or "Minority-Owned Businesses" or "Disabled Veteran Business Enterprises" as defined in CPUC General Order 156, and the number of new employees hired by Seller or Seller's contractors and the number of women, minority, and disabled veterans trained or hired by Seller or Seller's contractor's as contemplated under Cal. Public Utilities Code §910(a)(8), as each such group of entities and individuals may be amended from time to time or further defined, supplemented, or superseded by applicable Law or replaced with similar designations or certifications. *[Include other covenants related to "women-owned business" or "minority-owned business" as may be applicable to the Seller's RFO bid.]*

(b) Construction Milestones.

- (i) The Parties agree time is of the essence in regards to this Agreement. As such, the Parties also agree certain milestones for the construction of the Project as set forth in the Milestone schedule attached hereto as Exhibit B ("Milestones") must be achieved in a timely fashion or Buyer will suffer damages.
- (ii) Within seven (7) days after completion of each Milestone, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone. If Seller misses the deadline date for three (3) or more Milestones or

misses the deadline date for any one Milestone by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“Remedial Action Plan”) that describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones no later than the Guaranteed Commercial Operation Date (as it may be extended under Section 3.9(c)(i)-(ii)); provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date.

(c) Daily Delay Damages.

- (i) COD. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. ***[NOTE to bidders: To be changed to 30 days for 2021 online date bids.]*** Seller may elect to extend the Guaranteed Commercial Operation Date for no more than a total of [] days (the “Project Cure Period”) by providing Buyer with Notice of its election to extend the Guaranteed Commercial Operation Date by no later than 5:00 p.m. on the Business Day prior to the Guaranteed Commercial Operation Date along with Seller’s estimate of the duration of the extension and its payment of Daily Delay Damages for each day or portion of a day that the Guaranteed Commercial Operation Date is extended. Seller may further extend the Guaranteed Commercial Operation Date beyond the already extended Guaranteed Commercial Operation Date subject to the same terms applicable to the original extension; provided, however, that the total of all extensions under this clause (i) shall not exceed the Project Cure Period. The Daily Delay Damages payments are in addition to, and not a part of, the Construction Period Security. Seller will be entitled to a refund (without interest) of any estimated Daily Delay Damages payments paid by Seller that exceed the amount required to cover the number of days or partial days by which the Commercial Operation Date occurred after the original Guaranteed Commercial Operation Date (where the original Guaranteed Commercial Operation Date excludes any extensions under this Section 3.9(c)(i) but includes any extensions under Section 3.9(c)(ii)). In addition, Seller shall submit a Remedial Action Plan within ten (10) days after each extension of the Guaranteed Commercial Operation Date if the Project has not then achieved the Commercial Operation Date. Each Party agrees and acknowledges

that (a) the actual damages that Buyer would incur due to a delay in achieving the Commercial Operation Date on or before the original Guaranteed Commercial Operation Date (where the original Guaranteed Commercial Operation Date excludes any extensions under this Section 3.9(c)(i) but includes any extensions under Section 3.9(c)(ii)) would be difficult or impossible to predict with certainty, (b) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the Daily Delay Damages set forth in this section are the exclusive remedy for Seller's delay in achieving the Commercial Operation Date for the length of the extensions paid for in advance by Seller up to the Project Cure Period but shall not otherwise act to limit any of Buyer's rights or remedies arising from any other Event of Default by Seller, including, without limitation, the failure by Seller to achieve the Commercial Operation Date altogether.

- (ii) Extensions. The Guaranteed Commercial Operation Date and the deadline dates for Milestone numbers [] as set forth in Exhibit B shall be extended on a day for day basis for up to ninety (90) *[NOTE: to be changed to 30 days for 2021 online bids.]* calendar days in the aggregate ("Force Majeure Extension Period") without imposition of any Daily Delay Damages to the extent Seller is actually and demonstrably delayed in its critical path to achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date as a result of Force Majeure; provided, however, any such delay in excess of this period shall be subject to Daily Delay Damages pursuant to Section 3.9(c)(i).

3.10 Operating Procedures. No later than forty-five (45) days before the Commercial Operation Date, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Planned Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) Scheduling procedures; and (7) invoicing and payment procedures; provided, that the failure to agree on these operating procedures will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 12.

ARTICLE 4: COMPENSATION; MONTHLY PAYMENTS

4.1 *[For Dispatchable Product Only: Capacity Payment.*

- (a) Capacity Price.

Contract Year	Capacity Price (\$/KW)

- (b) Monthly Capacity Payment. For each month, Buyer shall pay Seller for the Product the amount calculated as follows (“Monthly Capacity Payment”):

$$MCP = CC \times CP \times SF \times AAF$$

Where:

MCP is the Monthly Capacity Payment expressed in Dollars for such month of the Delivery Term.

CC is the Contract Capacity, expressed in kW, rounded to the nearest 100 kW.

CP is the Capacity Price expressed in Dollars per kW-year, for the applicable month.

SF is the Monthly Shaping Factor for the applicable month, as set forth in the following table:

Month	Monthly Shaping Factor (%)
January	6.7
February	5.0
March	5.0
April	5.8
May	6.3
June	8.3
July	15.8
August	17.5
September	11.7
October	5.8
November	5.8
December	6.3

AAF is the Availability Adjustment Factor for each month, expressed as a three-place decimal and determined as follows:

- (a) If the Equivalent Availability Factor (“EAF”) for the month is less than or equal to 0.980, then the AAF equals EAF / 0.98.
- (b) If the EAF for the month is greater than 0.980 but less than 0.990, then the AAF equals 1.0.

- (c) If the EAF for the month is greater than or equal to 0.990, then the AAF equals $EAF / 0.99$.

EAF is the Equivalent Availability Factor for each month determined as follows:

$$EAF = (PH - (EDH - EEDH)) / PH$$

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity divided by the Contract Capacity for the month. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Forced Outages, Force Majeure events, Dispatch Down Periods, Planned Outages, Buyer's failure to perform, and other times when any portion of the Contract Capacity is not available and when the Delivered Energy of the Project is less than the amount of Energy dispatched by Buyer; and

EEDH is the number of equivalent excused derate hours solely due to either Dispatch Down Periods or Buyer's failure to perform (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity, divided by the Contract Capacity for the month.

4.2 Energy Payment. ***[NOTE: for this IRP RFO, contract price shall be adjusted based on NQC provided. Formula for such adjustments will be provided based on bid.]***

- (a) Energy Price. The price for the Bundled Green Energy that is delivered to Buyer in each Contract Year shall be as follows ("Energy Price"):

Contract Year	Energy Price (\$/MWh)

provided, however, that:

- (i) if Seller delivers Bundled Green Energy in the aggregate for any CAISO settlement interval (not to exceed one hour) in excess of the product of the Contract Capacity times the length of such settlement interval, expressed in hours, then the Energy Price for such excess Bundled Green Energy in such settlement interval shall be reduced to zero dollars (\$0), and if the real time Locational Marginal Price for the Delivery Point during such settlement interval is less than zero dollars (\$0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times such excess Bundled Green Energy;
- (ii) if Seller delivers Bundled Green Energy in the aggregate for any Contract Year during the Delivery Term in excess of one hundred fifteen percent (110%) of the annual Contract Quantity, then the Energy Price for such excess Bundled Green Energy for the remainder of that Contract Year shall be reduced to zero dollars (\$0), and for each CAISO settlement interval during that time in which the real time Locational Marginal Price is less than zero dollars (\$0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times the Bundled Green Energy delivered during such settlement interval;
- (b) Monthly Energy Payment. For each month, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of the Energy Price times the Bundled Green Energy in each hour (“Monthly Energy Payment”).

$$\text{Monthly Energy Payment} = \sum \text{Energy Price} \times \text{Bundled Green Energy}$$

For any period where the quantity of Bundled Green Energy is less than the quantity of Delivered Energy and the quantity of Bundled Green Energy cannot practicably be determined for each settlement interval during such period (for example, where WREGIS does not specify in which settlement periods Renewable Energy Credits were delivered or not delivered), then the quantity of Bundled Green Energy for any settlement interval during the entire period shall be equal to the product of the quantity of Delivered Energy for a settlement interval multiplied by the quotient of the aggregate quantity of Green Attributes that are delivered to Buyer during such entire period divided by the aggregate quantity of Delivered Energy that is delivered to Buyer during such entire period.

4.3 Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered “Positive Imbalance Energy;” when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the “Negative Imbalance Energy.” ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Seller shall be responsible for settlement of Imbalance Energy with the CAISO and all fees, liabilities, assessments, or similar charges assessed by the CAISO in connection with Imbalance

Energy.] Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals.]

[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program, include the following two paragraphs:

- (a) Positive Imbalance Energy (Over Deliveries). In the event that Delivered Energy for any CAISO settlement interval is equal to or greater than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Positive Imbalance Energy. Buyer shall receive all Green Attributes for the Positive Imbalance Energy in such CAISO settlement interval regardless as to whether it was sold into the CAISO. Seller shall be entitled to all payments or credits from the CAISO to Seller's SC and Seller shall make all payments to the CAISO in respect of the Positive Imbalance Energy.
- (b) Negative Imbalance Energy (Under Deliveries). In the event that Delivered Energy for any CAISO settlement interval is less than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Negative Imbalance Energy. Seller shall make all payments to the CAISO and Seller shall be entitled to all payments or credits from the CAISO to Seller's SC in respect of the Negative Imbalance Energy required under the CAISO Tariff.]

4.4 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to transmission upgrades funded by Seller.

4.5 Energy Sales Prior to Commercial Operation Date. For each month prior to the Commercial Operation Date, as compensation for the Product delivered to Buyer, (i) Buyer shall pay Seller for the Product an amount equal to the product of ***[SDG&E to insert REC value amount in \$/MWh]*** times the total Bundled Green Energy delivered to Buyer in such month, and (ii) Seller shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project, and Seller shall be responsible for all CAISO costs (including penalties, Imbalance Energy costs, and other charges) including all CAISO charges or penalties, in each case, resulting from the Project not being available, the Seller not notifying the CAISO of outages in a timely manner, and any other failure by Seller to abide by the CAISO Tariff, including without limitation uninstructed deviation penalties. ***[When Buyer is SC for the Project, include the following:*** Each month, Buyer (as the SC for the Project) shall deliver an invoice to Seller including a statement of all such CAISO revenues and charges within thirty (30) days after the CAISO final settlement data is available to Buyer for such deliveries.]

ARTICLE 5: EVENTS OF DEFAULT; FORCE MAJEURE

5.1 Events of Default. An “Event of Default” shall mean,

- (a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:
 - (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;
 - (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
 - (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.1(h)) and such failure is not remedied within thirty (30) days after Notice thereof;
 - (iv) such Party becomes Bankrupt;
 - (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 13.2; or
 - (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:
 - (i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project *[If the Project is located outside of the CAISO: other than Imbalance Energy from the Transmission Provider]*;
 - (ii) the failure by Seller to achieve the Commercial Operation Date no later than the Guaranteed Commercial Operation Date;
 - (iii) *[For Baseload, Peaking, Dispatchable Product: the Contract Capacity at the Commercial Operation Date* or at any other time

pursuant to a Capacity Test is less than [] MW and such default is not remedied within thirty (30) days after Notice thereof;]
[NOTE: for this IRP RFO, there will be an NQC minimum of 70% bid NQC, which must be maintained on average over any consecutive 12-month period.]

- (iv) ***[For Baseload, Peaking, As-Available Product: the failure by Seller to achieve the Guaranteed Energy Production requirement during any Performance Measurement Period as set forth in Section 3.1(e) of this Agreement] [For Dispatchable Product: the Default Availability Factor of the Project is less than [] percent for any rolling twelve (12) consecutive calendar month period];***
- (v) the failure by Seller to deliver a Remedial Action Plan that reasonably demonstrates in detail how Seller will achieve the Commercial Operation Date no later than the Guaranteed Commercial Operation Date, if such failure is not remedied within ten (10) days after Notice;
- (vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.3 or 8.4 of this Agreement;
- (vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - (A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
 - (B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
 - (C) the Guarantor becomes Bankrupt;
 - (D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
 - (E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

- (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or
- (viii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:
- (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s;
- (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

5.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) that terminates this Agreement and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 5.3 below (“Termination Payment”); (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

5.3 Termination Payment. The Termination Payment for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. Except in the case of a termination of this Agreement by the Non-Defaulting Party solely as a result of an Event of Default by the Defaulting Party under Section 5.1(a)(iv) [Bankruptcy], if the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 12.

5.6 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 5 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

5.8 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure to the other Party as detailed below, then, the Party impacted by Force

Majeure shall be excused from the performance of its obligations to the extent impacted. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Seller shall not substitute Product from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Product that Seller fails to Schedule, deliver or provide as a result of Force Majeure during the term of a Force Majeure. This Agreement may be terminated by the non-claiming Party with no further obligation to the Force-Majeure-claiming Party if a Force Majeure event prevents the performance of a material portion of the obligations of the Force-Majeure-claiming Party hereunder and such Force Majeure event is not resolved within eight (8) months after the commencement of such Force Majeure event. In addition to the foregoing, prior to the Commercial Operation Date, this Agreement may be terminated by Buyer with no further obligation to Seller if one or more Force Majeure events prevents Seller from achieving the Commercial Operation Date by the end of the Force Majeure Extension Period; provided, however, that Buyer shall not have the right under this section to terminate this Agreement until the Guaranteed Commercial Operation Date if Seller is paying delay liquidated damages to Buyer as required under Section 3.9(c)(i) during the Project Cure Period (it being acknowledged, that Seller may elect to pay Daily Delay Damages during periods of Force Majeure up to the expiration of any remaining unclaimed portion of the Project Cure Period in lieu of claiming Force Majeure relief hereunder).

ARTICLE 6: PAYMENT

6.1 Billing and Payment. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the invoice; and (c) an invoice, in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with Article 4 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date

the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.3 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Section 3.1(h), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR

PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.

8.2 Seller Financial Information. Seller shall provide the following financial information:

- (a) If requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.
- (b) ***[If a Guaranty may be provided:*** If a Guaranty is provided and if requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Guarantor's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Guarantor's quarterly report containing unaudited consolidated financial statements for such fiscal quarter certified by an officer of Guarantor. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Guarantor diligently pursues

the preparation, certification and delivery of the statements. Seller shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.]

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance.

- (a) ***[For Agreements with Delivery Terms greater than two years: CPUC Approval Security,]*** Development Period Security, Construction Period Security, Delivery Term Security. To secure its obligations under this Agreement Seller agrees to deliver to Buyer and maintain in full force and effect for the period set forth below, the following Performance Assurance:
- (i) ***[For Agreements with Delivery Terms greater than two years: CPUC Approval Security,*** in the amount of [] in the form of cash or a Letter of Credit [or a Guaranty] from the Execution Date of this Agreement until the return date specified in Section 8.4(b)(i) below;
- (ii) Development Period Security in the amount of [] in the form of cash or a Letter of Credit [or a Guaranty] from ***[For Agreements with Delivery Terms greater than two years: the CPUC Approval Date]*** ***[For all other Agreements: the Execution Date of this Agreement]*** until the return date specified in Section 8.4(b)[(i)/(ii)] below;

- (iii) Construction Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the CP Satisfaction Date until the return date specified in Section 8.4(b)[(ii)/(iii)] below; and
- (iv) Delivery Term Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the commencement of the Delivery Term until the return date specified in Section 8.4(b)[(iii)/(iv)] below.

Except as set forth in Section 2.2 as it pertains to [*For Agreements with Delivery Terms greater than two years:* the CPUC Approval Security and] the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

(b) Return of Performance Assurance.

- (i) [*For Agreements with Delivery Terms greater than two years:* Buyer shall promptly return to Seller the unused portion of the CPUC Approval Security after the earlier of (A) the date on which Seller has delivered the Development Period Security or the Construction Period Security, as applicable, and (B) termination of the Agreement under Section 2.4(b)(ii).
- (ii) Buyer shall promptly return to Seller the unused portion of the Development Period Security after the earlier of (A) the date on which Seller has delivered the Construction Period Security, and (B) termination of the Agreement under Section 2.4(b)(ii).
- (iii) Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Term Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
- (iv) Buyer shall promptly return to Seller the unused portion of the Delivery Term Security after the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

8.5 Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as [*For Agreements with Delivery Terms greater than two years:* CPUC Approval Security,] Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, at the Interest Rate. On or before each Interest Payment

Date, Buyer shall transfer the sum of all accrued and unpaid Interest Amounts due to Seller for such security in the form of cash by wire transfer to the bank account specified under “Wire Transfer” in the Cover Sheet.

8.6 Costs of Letter of Credit. If Seller provides Performance Assurance in the form of a Letter of Credit, in all cases, the reasonable costs and expenses of (including but not limited to the reasonable costs, expenses, and attorneys’ fees, including reasonably allocated costs of in-house counsel of the Buyer) establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller.

ARTICLE 9: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority (“Governmental Charges”) on or with respect to the Product or the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES; COVENANTS

10.1 General Representations and Warranties. On the Execution Date and the CP Satisfaction Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (b) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, except for as of the Execution Date (i) CPUC Approval in the case of Buyer, and (ii) all Governmental Approvals necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;
- (c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law;

- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (f) except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

10.2 Seller Representations and Warranties.

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent

legislation. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.

- (c) *[Include other appropriate representations, warranties, and covenants to satisfy the California RPS content category requirements.]*

10.3 Covenants.

- (a) General Covenants. Each Party covenants that throughout the Delivery Term:

- (i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;
- (iii) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law; and
- (iv) it shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

- (b) Seller Covenants.

- (i) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.
- (ii) Seller covenants throughout the Delivery Term that it shall maintain market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement.
- (iii) If at any time during the Delivery Term, Seller’s representations and warranties set forth in Section 10.2 become materially false or misleading, Seller covenants that it shall provide prompt Notice to Buyer describing such default along with a description of its efforts to cure such default.
- (iv) *[Include other appropriate representations, warranties, and covenants to satisfy the California RPS content category requirements.]*

- (v) *[Include other appropriate covenants regarding the use of contractors that may be diverse business enterprises.]*

ARTICLE 11: TITLE, RISK OF LOSS, INDEMNITIES

11.1 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

11.2 Indemnities.

- (a) Indemnity by Seller. Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("Claims") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered under this Agreement up to and at the Delivery Point, (ii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (iii) the failure by Seller or the failure of the Project to comply with applicable Law, including without limitation the CAISO Tariff, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.
- (b) Indemnity by Buyer. Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Delivery Point, (ii) the failure by Buyer to comply with applicable Law, including without limitation the CAISO Tariff, or (iii) any Governmental Charges for which Buyer is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

ARTICLE 12: DISPUTE RESOLUTION

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article 12. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Article 12.

12.2 Management Negotiations.

- (a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
- (c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.
- (d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 12.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

12.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 12.2 above shall be resolved through binding arbitration by a retired judge or justice from the [AAA][JAMS] panel conducted in San Diego, California, administered by and in

accordance with [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] Arbitration Rules and Procedures] ("Arbitration").

- (a) Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] Arbitration Rules and Procedures].
- (b) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.
- (c) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- (d) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
- (e) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
- (f) Judgment on the award may be entered in any court having jurisdiction.
- (g) The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.
- (h) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the

arbitrator concludes that there is no material issue of fact pending before the arbitrator.

- (i) The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 13.1.

ARTICLE 13: MISCELLANEOUS

13.1 Confidentiality.

- (a) **General.** Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 13.1(b) of this Agreement; (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vii); (vi) to a Qualified Assignee subject to an appropriate non-disclosure agreement; or (vii) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 13.1(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- (b) **RPS Confidentiality.** Notwithstanding Section 13.1(a) of this Agreement, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval for this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Term, Project location, Contract Capacity, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.
- (c) **Publicity.** Except as otherwise agreed to in this Section 13.1 above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party

without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.

13.2 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

13.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Default Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after such twelve-month period. In addition, Buyer shall have the right, at its sole expense and during normal working hours, to examine the records of Seller to the extent reasonably necessary to verify Seller's compliance with its representations and warranties set forth in Section 10.2.

13.4 Sarbanes-Oxley and SEC Requirements. The Parties acknowledge that accounting principles generally accepted in the United States of America ("GAAP") and SEC rules require Buyer and its independent auditor to evaluate whether Buyer must consolidate Seller's financial information (but not financial information of Seller's constituent members unless deemed to be included in the entity under GAAP). Buyer may require access to information concerning Seller's organizational structure, including its debt/capital structure, as well as to personnel of Seller to determine if consolidated financial reporting is required. If Buyer and its independent auditor determine at any time that the Buyer must consolidate the Seller's financial statements to comply with GAAP and/or SEC rules regarding consolidated financial reporting, then:

- (a) Buyer shall require from Seller and Seller agrees to provide to Buyer the following during the Term of this Agreement:

- (i) Unaudited financial statements of the Seller prepared in accordance with GAAP as of the end of the quarterly period. The financial statements should include quarter to date and year to date information and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);
 - (ii) Unaudited financial schedules of the Seller, as deemed necessary for Buyer to prepare its consolidated financial statements and related footnotes to the financial statements in accordance with GAAP as of the end of the quarterly period. The financial schedules should include quarter to date and year to date information underlying the financial statements and footnotes to the financial statements and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);
 - (iii) Access to Seller's accounting and other records, and accounting and management personnel as reasonably determined by both Buyer and Seller so that (A) Buyer's independent auditor or its internal auditors may conduct financial audits (in accordance with the standards of the Public Company Accounting Oversight Board (United States)) as well as internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002) and (B) Buyer can be provided analytical information, as needed, to enable Buyer to meet its SEC filing requirements, including but not limited to those under Item 2 on Form 10-Q, and Item 7 on Form 10-K, "Management's Discussion and Analysis of Financial Condition and Results of Operations;"
 - (iv) Upon the request of Buyer, such certifications by a duly authorized representative(s) of Seller as may be reasonably requested by Buyer (which certifications shall presumptively be reasonable if the certifications are substantially identical to those required by Buyer or its parent of business units of Buyer or its parent); and
 - (v) As reasonably requested by Buyer, such information or schedules, similar to the items noted in clauses (i)-(iv) above, to enable Buyer to prepare consolidated financial statements and schedules as may be required for Buyer to obtain financing or to prepare other reports as required by regulatory bodies, such as the SEC, for periods other than as of the end of the monthly, quarterly or year to date periods then ended.
- (b) If Buyer (i) in its sole discretion determines that the financial statements of the Seller would be considered material to the Buyer or its parent company's financial statements, financial condition, or internal controls over financial reporting, and (ii) reasonably determines Seller's internal controls over financial reporting are not operating effectively or have

resulted in a control deficiency, Buyer shall provide Notice to Seller. Upon receipt of such Notice, Seller will have thirty (30) days to remediate any deficiency in Seller's internal controls over financial reporting identified by the Buyer, which Buyer and Buyer's independent auditor deem to be necessary to ensure Seller's internal controls over financial reporting are adequate, during or as a result of the audits permitted under Section 13.4(a)(iii) or any other provision of this Agreement.

- (c) As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to Buyer a Notice describing such occurrence in sufficient detail to permit the Buyer to file a report on SEC Form 8-K. Such occurrences include all reportable events on the then current Form 8-K that applies to Buyer and its parent company at such time, including but not limited to a material acquisition or disposition of assets, a material direct financial obligation or off-balance sheet financing arrangement, material litigation, and the execution or termination of a material contract.
- (d) Any information provided to Buyer shall be treated as confidential except that it may be disclosed in connection with the preparation, review, certification and publication of Buyer's financial statements.
- (e) Seller shall notify Buyer at any time during the term of this Agreement of any services provided or proposed to be provided to Seller by Buyer's independent auditor. Seller, and any of Seller's Affiliates, are prohibited from engaging Buyer's independent auditor for any services or in any consulting agreement without the express written consent of partner in charge of Buyer's independent audit.

13.5 Entire Agreement. This Agreement, together with the Cover Sheet and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire agreement between the Parties.

13.6 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

13.7 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

13.8 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED

AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

13.9 Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

13.10 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party's successors and permitted assigns.

13.11 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

13.12 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

13.13 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication delivered personally, by a nationally recognized overnight courier, mailed by registered or certified mail (return receipt requested), or by facsimile or e-mail (if facsimile numbers or e-mail addresses are identified on the Cover Sheet or by subsequent Notice) to the receiving Party at the addresses identified on the Cover Sheet (or at such other addresses as such receiving Party shall identify by like Notice to the other Party); provided, however, that notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail (if facsimile numbers or e-mail addresses are identified on the Cover Sheet or by subsequent Notice). A Notice delivered in accordance herewith shall be deemed received (i) on the date of delivery, if hand delivered, (ii) two Business Days after the date of sending, if sent by a nationally recognized overnight courier, or at such earlier time as is confirmed by the receiving

Party, (iii) three Business Days after the date of mailing, if mailed by registered or certified mail, return receipt requested, or at such earlier time as is confirmed by the receiving Party, and (iv) on the Business Day on which such Notice was transmitted by facsimile transmission or e-mail (where permitted); provided, however, that a Notice delivered in accordance with this Section but received on any day other than a Business Day or after 5:00 p.m. in the place of receipt will be deemed received on the next Business Day. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or Dispatch Order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

13.14 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956) and clarified by *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

[_____]
a [_____]

SAN DIEGO GAS & ELECTRIC
COMPANY
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

PROJECT DESCRIPTION

Project name _____

Project Site name: _____

Project physical address: _____

Total number of electric generating units at the Project (committed and not committed to Buyer) _____

Technology Type: _____

Substation:

The term “Site” as defined in the Agreement means the following parcel description upon which the Project is located:

Latitude and Longitude of Project:_____.

The nameplate capacity of the Project is _____.

The electric generating units utilized as generation assets as part of the Project are described below:

[INSERT MAP]

Exhibit B

MILESTONE SCHEDULE

	<i>Date</i>	<i>Project Name</i>
1.		Obtains control of all lands and rights-of-way comprising the Site.
2.		Files a CEC Pre-Certification and Verification application.
3.		Receives a completed [Phase I Interconnection Study Report] [interconnection feasibility study] and CAISO Deliverability Assessment Study Report. <i>[Omit if addressed by a Condition Precedent]</i>
4.		Receives a completed [Phase II Interconnection Study Report] [interconnection system impact study] and CAISO Deliverability Assessment Study report <i>[Omit if addressed by a Condition Precedent]</i>
5.		Files CEQA/NEPA application with appropriate agency(ies).
6.		Executes interconnection agreement and/or transmission agreement and receives FERC approval.
7.		Receives CEQA/NEPA approval/permit
8.		Executes an Engineering, Procurement and Construction (“EPC”) contract.
9.		Delivers full NTP under EPC contract and begins construction of the Project.
10.		<i>[For Projects located in the CAISO:</i> Executes Meter Service Agreement and Participating Generator Agreement. <i>[For Projects located outside of the CAISO:</i> Executes or causes to be executed all Pseudo Tie Agreements.]
11.		Delivers Energy to the Transmission Provider to which the Project is physically interconnected.
12.		Receives all Governmental Approvals necessary to achieve COD.
13.		Receives CEC Certification and Verification.

Exhibit C

FORM OF LETTER OF CREDIT

[DATE]

To: San Diego Gas & Electric Company
555 W. Fifth Street
Mail Code: ML 18A3
Los Angeles, CA 90013

Re: Our Irrevocable Standby Letter of Credit No. _____
In the Amount of US\$ _____

Ladies and Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Beneficiary] ("Beneficiary"), by order and for account of [name of Applicant] ("Applicant"), [address of Applicant], available at sight upon demand at our counters, at [location] for an amount of US\$ _____ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

- 1- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "[name of Applicant] ("Applicant") is in default under the Power Purchase Agreement between Beneficiary and Applicant dated _____ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a "default", "event of default" or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. \$ _____."

or

- 2- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "[name of Applicant] ("Applicant") has forfeited all or part of its ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security or] Development Period Security as set forth and defined in the Power Purchase Agreement between Beneficiary and Applicant dated _____. The amount due to Beneficiary, whether or not a default has occurred, is U.S. \$ _____."

or

- 3- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit

beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. \$_____."

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.
- Partial and multiple drawings are permitted.
- Fax of Document 1 or 2 or 3 above is acceptable. Notwithstanding anything to the contrary herein, any drawing hereunder may be requested by transmitting the requisite documents as described above to us by facsimile at _____ or such other number as specified from time to time by us. The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Beneficiary that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1, 2, or 3 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 ("UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

Authorized Signature(s)

Exhibit D

FORM OF GUARANTY

GUARANTY

In consideration of San Diego Gas & Electric Company ("Company") entering into a power purchase agreement with [NAME OF COUNTERPARTY] (hereinafter referred to as "Applicant"), [NAME OF GUARANTOR], a [TYPE OF LEGAL ENTITY i.e. California corporation], (hereinafter referred to as "Guarantor") agrees with Company as follows:

1. The term "Obligations" shall mean all obligations, liabilities and indebtedness of any kind whatsoever arising in connection with _____ or arising in connection with or under any security agreement or other agreement between the Company and Applicant. The amount of Obligations existing from time to time shall be calculated after giving effect to all contractual netting arrangements between Applicant and the Company.

2. Guarantor unconditionally and irrevocably guarantees to Company the full, prompt and faithful payment and performance when due of each and all of the Obligations.

3. This is a continuing guaranty relating to the Obligations. Guarantor acknowledges that there is a continuing consideration to Guarantor for this Guaranty and therefore Guarantor waives and relinquishes the right to revoke or terminate this Guaranty as provided in California Civil Code Section 2815.

4. Any of the Obligations may be amended, modified, waived, or increased (whether or not beyond any dollar limitation hereunder), further agreements may be entered into between Company and Applicant, Company may provide additional goods or services or credit to Applicant or increase or decrease the dollar value of such goods, services or credit, and further obligations (including, without limitation, the provision or pledging of security to Company for any obligation), indebtedness and liabilities may be entered into or incurred from time to time by Applicant and without further authorization from or notice to Guarantor and no such action shall terminate, release, impair, reduce, discharge, diminish or in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse or defense against Company. Company need not inquire into the power of Applicant or the authority of its officers, directors, partners or agents acting or purporting to act in its behalf.

5. With respect to all Obligations, this is a guaranty of payment and performance and not of collection, and Guarantor waives and agrees not to assert or take advantage of:

(a) any right to require Company to proceed against Applicant or any other person or to resort to, proceed against or exhaust any security held by it at any time or to pursue any other remedy in its power before proceeding against any Guarantor;

(b) demand, presentment, protest and notice of any kind including, without limiting the generality of the foregoing, notice of nonperformance, protest, dishonor and acceptance of this Guaranty, notice under Section 9611 of the California Commercial Code, and notice of the existence, creation or incurring of any new or additional indebtedness or obligation

or of any action or non-action on the part of Applicant, Company, a guarantor under this or any other instrument, or creditor of Applicant or any other person whomsoever, in connection with any of the Obligations or any collateral for any of the Obligations or in connection with any of the Obligations; and

(c) any suretyship defenses and suretyship rights of every nature otherwise available under California law and the laws of any other state or jurisdiction, including, without limitation, all defenses and rights arising under Sections 2787 through 2855 of the California Civil Code (the "Suretyship Provisions") and any successor provisions to those Sections. Without limiting the generality of the foregoing, Guarantor acknowledges his, her or its understanding that the Suretyship Provisions provide various partial or complete defenses to the recovery by Company from Guarantor and/or grant Guarantor rights the enforcement of which could reduce or eliminate entirely Guarantor's liability hereunder to Company. Among the defenses and rights contained in the Suretyship Provisions are the following: (1) Section 2809 of the Civil Code, which provides, in part, that the obligation of a surety must not be either larger in amount or in other respects more burdensome than that of the principal; (2) Section 2810 of the Civil Code, which provides, in part, that a surety is not liable if for any reason other than the mere personal disability of the principal there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases; (3) Section 2819 of the Civil Code, which provides, in part, that a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety; (4) Section 2845 of the Civil Code, which provides, in part, that a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue and which would lighten the surety's burden; (5) Section 2846 of the Civil Code, which provides that a surety may compel his principal to perform the obligation when due; (6) Section 2847 of the Civil Code, which provides, in part, that if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety; (7) Section 2848 of the Civil Code, which provides, in part, that a surety, upon satisfaction of the obligation of the principal is entitled to enforce remedies which the creditor then has against the principal; (8) Section 2849 of the Civil Code, which provides, in part, that a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor; (9) Section 2850 of the Civil Code, which provides, in part, that whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation; and (10) Section 2822 of the Civil Code, which provides, in part, for a right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation.

6. All existing and future indebtedness of Applicant to Guarantor ("Intercompany Obligations") is subordinated to all Obligations hereby guaranteed. All of Guarantor's right, title and interest in and to the Intercompany Obligations and rights to receive any payments of the Intercompany Obligations are hereby granted and assigned to Company as continuing security for the Obligations hereby guaranteed, and, in the event of any default in the payment of any of the Obligations when due and until the Obligations guaranteed hereby have been paid in full (a) at the Company's request, Applicant shall forthwith pay to the Company all or any part of such Intercompany Obligations and any capital which Guarantor is entitled to withdraw until all of the Obligations guaranteed hereby have been paid in full, and (b) Guarantor shall pay to Company immediately any payments of such Intercompany Obligations received by Guarantor.

7. Guarantor agrees to pay all attorneys' fees (including without limitation, reasonably allocated fees of in-house counsel) and all other costs and expenses which may be incurred by Company in the enforcement of this Guaranty against Guarantor.

8. This Guaranty is not assignable by Guarantor without Company's consent. This Guaranty shall inure to the benefit of Company and its successors and assigns, including the assignees of any Obligations, and bind the heirs, executors, administrators, successors and permitted (if any) assigns of Guarantor. This Guaranty is assignable by Company with respect to all or any portion of the Obligations, and when so assigned Guarantor shall be liable to the assignees under this Guaranty without in any manner affecting the liability of Guarantor hereunder with respect to any Obligations retained by Company.

9. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, without reference to its choice of law provisions. Guarantor hereby irrevocably and unconditionally agrees that any legal action or proceeding against Guarantor or any of Guarantor's property with respect to this Guaranty may be brought in the courts of the State of California in the County of San Diego or the courts of the United States in the County of San Diego, as Company may elect, and by executing and delivering this Guaranty Guarantor hereby submits to and accepts with regard to any such action or proceeding for himself, herself or itself and in respect of his, her or its property, generally, irrevocably and unconditionally, the jurisdiction of the above mentioned courts. Guarantor hereby irrevocably appoints the Secretary of State of the State of California as his, her or its agent for service of process in any suit or proceeding if the Guarantor is located outside the State of California at the time of service or cannot reasonably be located by Company. The foregoing, however, shall not limit the right of Company as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction including but not limited to any other jurisdiction in which Guarantor or his, her or its property is located.

10. Except as provided in any other written agreement now or at any time hereafter in force between Company and Guarantor, this Guaranty shall constitute the entire agreement of Guarantor with Company with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Company unless expressed herein.

11. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by reliable overnight courier to the address of the Company set forth below (or to such new address as Company may designate hereafter in a notice to Guarantor) in the case of a communication to the Company and to the address appearing next to Guarantor's signature on this Guaranty (or to such new address as Guarantor may designate hereafter in a notice to Company) in the case of a communication to Guarantor. Any notice served personally shall be deemed delivered upon receipt, and any notice served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier.

San Diego Gas & Electric Company
555 W. Fifth Street

Attn: Major Markets 18A3, Credit Manager
Los Angeles, CA 90013
Fax No.: (213) 244-8316

12. Until all of the Obligations guaranteed hereby have been satisfied in full, Guarantor shall have no right of subrogation or reimbursement from the Applicant which Guarantor may have as a result of any payment by Guarantor under this Guaranty, and waives any right to enforce any remedy which Company now has or may hereafter have against the Applicant as a result of such payment by Guarantor under this Guaranty and waives any right under section 2849 of the California Civil Code and any other benefit of or right to participate in any security now or hereafter held by Company.

13. All amounts payable by Guarantor hereunder shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that Guarantor shall be prohibited by law from doing so, in which case Guarantor shall pay to Company such additional amount as shall be necessary to ensure that Company receives the full amount it would have received if no such deduction or withholding had been made.

14. If any portion of this Guaranty is held to be unenforceable by a court of competent jurisdiction, the remainder of this Guaranty shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty on [MONTH AND DAY], [YEAR].

GUARANTOR:
[NAME OF GUARANTOR]

Signature

Title

Printed Name of Person Signing for
Guarantor

Guarantor's Address

City, State, Zip

Guarantor's Phone No.

Exhibit E

COMMERCIAL OPERATION CERTIFICATE

The undersigned, _____ (“EPC Contractor”), _____ (“Renewable Generation Equipment Supplier”), _____ (“Licensed Professional Engineer”) and _____ (“Owner”) make the following certifications to San Diego Gas & Electric Company (“SDG&E”), dated as of _____. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Power Purchase Agreement dated _____ between Owner and SDG&E (the “Agreement”).

Renewable Generation Equipment Supplier hereby certifies that:

1. The [_____] comprising the Project have been erected and installed at the project site and have been commissioned as required under the Supply and Installation Agreement (“[_____] Supply Agreement”) dated as of _____, by and between Renewable Generation Equipment Supplier and Owner and each such [_____] has passed the performance testing required to be performed pursuant to the [_____] Supply Agreement.
2. The Warranty Period under the Warranty Agreement (“Warranty Agreement”) dated as of _____, by and between Renewable Generation Equipment Supplier and Owner has commenced.

EPC Contractor hereby certifies that:

All requirements necessary to achieve [Commercial Operation/Substantial Completion] as set forth in the agreement between the EPC Contractor and Owner dated _____ (“EPC Contract”) have been completed and the Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [minimum performance guarantees].

Owner hereby certifies that:

1. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Project, the Project has been completed in accordance with all applicable specifications and is ready for continuous commercial operation in compliance with all applicable laws and governmental approvals. The Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [insert minimum performance guarantees], and complete test reports have been submitted to Buyer.
2. The Operation and Maintenance Agreement (O&M Agreement), by and between Owner and _____ dated as of _____ has commenced.

3. Owner has a valid leasehold or real property interest in the Project Site for a term of at least [] years from the Commercial Operation date.
4. The interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Project to be received at the Delivery Point.
5. Owner has obtained all governmental approvals necessary for the continuous commercial operation of the Project and the Project is in compliance with all such governmental approvals and all other applicable laws.
6. The Contract Capacity of the Project is [] MWac and [] MWdc at [] conditions.

Licensed Professional Engineer certifies that:

1. We have read the Agreement, the [] Supply Contract, and the EPC Contract and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the [] Supply Contract, and the requirements for [Commercial Operation/Substantial Completion] under the EPC Contract.
2. We have reviewed the material and data made available to us by the Owner, the Renewable Generation Equipment Supplier, and the EPC Contractor for the Project.
3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.
4. We have reviewed the certificates of Owner, Renewable Generation Equipment Supplier, and EPC Contractor above, and find the representations provided to be correct in all material respects.
5. We have reviewed all Governmental Approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.
6. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of, Commercial Operation has occurred as defined in the Agreement.

Executed this ____ day of ____, 200__

**RENEWABLE GENERATION EQUIPMENT
SUPPLIER**

**[Name of Renewable Generation Equipment
Supplier]**

a _____ corporation

By: _____

Name: _____

Title: _____

EPC CONTRACTOR

[Name of EPC Contractor]

a _____ corporation

By: _____

Name: _____

Title: _____

OWNER

[Name of Owner]

a _____ limited liability company

By: _____

Name: _____

Title: _____

LICENSED PROFESSIONAL ENGINEER:

[Name of Licensed Professional Engineer]

a _____

By: _____

Name: _____

Title: _____

ACCEPTED BY SAN DIEGO GAS & ELECTRIC COMPANY

By: _____

Name: _____

Title: _____

Date: _____

Exhibit F

FORM OF QUARTERLY PROGRESS REPORT

**Quarterly Progress Report
of**

[_____]

(“Seller”)

**provided to
San Diego Gas & Electric Company**

[Date]

Table of Contents

[Insert Table of Contents]

1.0 Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Power Purchase Agreement by and between _____ (“Seller”) and San Diego Gas & Electric Company dated _____, ____ (the “Agreement”).

Seller shall review the status of each significant element of the Project schedule and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Project or the Project schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that Conditions Precedent and the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law or regulation, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project, attaining any Condition or Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Condition or Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;

(v) The status of any matter or issue identified as outstanding in any prior Quarterly Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form Quarter Quarterly Progress Report to [____], together with all attachments and exhibits, with [3] copies of the Report delivered to [____] and [_____].

2.0 Executive Summary.

2.1 Major activities to be performed for each aspect of the Project during the current calendar quarter.

Please provide a brief summary of the Major² activities to be performed for each of the following aspects of the Project during the current calendar quarter:

- 2.1.1 Design
- 2.1.2 Engineering
- 2.1.3 Major Equipment procurement
- 2.1.4 Construction
- 2.1.5 Milestone report
- 2.1.6 Permitting (See Section 3.0)

2.2 Major activities scheduled to be performed in the previous calendar quarter but not completed as scheduled.

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar quarter and their status, including those activities that were not completed as scheduled:

- 2.2.1 Design
- 2.2.2 Engineering
- 2.2.3 Major Equipment procurement
- 2.2.4 Construction
- 2.2.5 Milestone report
- 2.2.6 Permitting

3.0 Permitting.

² For Purposes of this Report, “Major” shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Facility or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller’s inability to achieve a Milestone Date.

The following describes each of the major Governmental Approvals required for the construction of the Project and the status of each:

3.1 State and/or federal Governmental Approvals.

Please describe each of the Major state and/or federal Governmental Approval (including the Permit to Construct issued by the San Diego County Air Pollution Control District) to be obtained by Seller (or EPC Contractor) and the status of each.

DESCRIPTION	STATUS

3.2 Local and/or county Governmental Approvals.

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller and the status of each.

DESCRIPTION	STATUS

3.3 Permitting activities which occurred during the previous calendar quarter.

Please list all permitting activities which occurred during the previous calendar quarter.

3.4 Permitting activities occurring during the current calendar quarter.

Please list all permitting activities which are expected to occur during the current calendar quarter.

3.5 Permitting Notices received from EPC Contractor.

Please attach to this Quarterly Progress Report copies of any notices related to permitting activities received from EPC Contractor during the previous calendar quarter.

4.0 Design Activities.

4.1 Table of design schedule to be followed by Seller and its subcontractors.

The following table lists the design schedule to be followed by Seller and its subcontractors.

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current calendar quarter.

Please explain in detail the design activities which are expected to be performed during the current calendar quarter.

4.3 Table of design activities completed during the previous calendar quarter.

Please explain in detail the design activities which were completed during the previous calendar quarter.

5.0 Engineering Activities.

5.1 Table of engineering schedule to be followed by Seller and its subcontractors.

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

5.2 Engineering activities to be performed during the current calendar quarter.

Please explain in detail the engineering activities which are expected to be performed during the current calendar quarter.

5.3 Engineering activities completed during the previous calendar month.

Please explain in detail the engineering activities which were completed during the previous calendar quarter.

5.4 Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

6.0 Major Equipment Procurement.

6.1 Table of major equipment to be procured by Seller and its subcontractors.

The following table lists major equipment to be procured by Seller and its subcontractors:

EQUIPMENT DESCRIPTION	MANUFACTURER	MODEL	CONTRACTED DELIVERY DATE	ACTUAL DELIVERY DATE	PROJECTED INSTALLATION DATE	ACTUAL INSTALLATION DATE

6.2 Major Equipment procurement activities to be performed during the current calendar quarter.

Please explain in detail the major equipment procurement activities which are expected to be performed during the current calendar quarter.

6.3 Major Equipment procurement activities completed during the previous calendar quarter.

Please explain in detail the major equipment procurement activities which were completed during the previous calendar quarter.

7.0 Construction Activities.

7.1 Table of construction activities to be performed by Seller and its subcontractors.

The following tables lists construction activities to be performed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE
Civil Progress			
Structural Progress			
[Steam] Generator Progress			
Piping Progress			
IC and Electrical Progress			
Subcontractor Progress			

7.2 Construction activities to be performed during the current calendar quarter.

Please explain in detail the construction activities which are expected to be performed during the current calendar quarter.

7.3 Construction activities completed during the previous calendar quarter.

Please explain in detail the construction activities which are expected to be performed during the previous calendar quarter.

7.4 EPC Contractor Monthly Progress Report.

Please attach a copy of the Monthly Progress Reports received during the previous calendar quarter from the EPC Contractor pursuant to the EPC Contract, certified by the EPC Contractor as being true and correct as of the date issued.

7.5 Three-month look-ahead construction schedule.

Please provide a three-month look ahead construction schedule.

8.0 Milestones.

8.1 Milestone schedule.

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous calendar quarter.

8.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).

Please explain in detail each of the following aspects of Seller's remedial action plan:

8.2.1 Missed Milestone

8.2.2 Plans to achieve missed Milestone

8.2.3 Plans to achieve subsequent Milestone

8.2.4 Delays in engineering schedule

Please explain in detail any delays beyond the scheduled Milestone Dates stated in Section 5.1, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

8.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

8.2.6 Delays in construction schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction schedule, and Seller's plans to remedy such impact.

9.0 Safety and Health Reports

9.1 Please list all accidents from the previous calendar quarter:

9.2 Any work stoppage from the previous calendar quarter:

9.3 Work stoppage impact on construction of the Project:

I, _____, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in the attached Seller's Quarterly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

RPS Project Development Status Report

Project Name

Date

Date of Latest Construction Progress Report from Counterparty:

Project Owner/Counterparty:

Technology:

Capacity (MW):

Annual Energy (GWh/year):

On-Line Date:

Term/Duration (years):

Construction Start Date:

Point of Delivery:

Location:

Status At-A-Glance

The below to be filled in w/ either: Completed, Acceptable, Unknown, or Concern. See Section B for a description of milestones. When the answer is "Concern" the milestone should be flagged with a notation number where additional detail is provided in Section A.

Milestones	Status	Initial Completion Date	Projected Completion Date
Fuel/Resource Supply:			
Financing:			
Corporate Financing			
Project Financing			
Site Control (100%):			
Permitting:			
Engineering:			
Major Equipment Procurement:			
Construction:			
Startup Testing and Commissioning:			
Transmission:			

Transmission - Detail (see Section C)

Dependent Transmission Upgrade(s):

Scheduled Completion:

Point of Interconnection:

Early Interconnection:

Gen-Tie Length:

Gen-Tie Voltage:

ISO Queue Position:

Feasibility Study (FS):

System Impact Study (SIS):

Facilities Study (FAS):

Remedial Action Plan:

Additional Comments:

Date of Preparation:

Exhibit G

OUTAGE NOTIFICATION FORM

OUTAGE NOTIFICATION FORM

This form may be used to comply with CAISO's outage notification requirements for both planned and forced outages. Report outages as soon as possible by submitting form via email to TSched@SemptraUtilities.com or via fax at (858) 650-6191.

Request Type:

New Scheduled Maintenance Outage



Previous Notification (if applicable)

Date Sent: mm/dd/yyyy

Time Sent: hh:mm

Generator Name: _____

Location Code: _____

Address: _____

Contact Name: _____

Phone Number: _____

Email: _____

Alternate Name: _____

Alternate Number: _____

Email: _____

(For times, use 24hr format)

Today's Date: mm/dd/yyyy

Current Time: hh:mm

Outage Start Date: mm/dd/yyyy

Outage Start Time: hh:mm

Outage End Date: mm/dd/yyyy

Outage End Time: hh:mm

Outage Duration: _____

MW Available During Outage: _____

MW Unavailable During Outage: _____

RMR Unit? Yes/No

System (Select One)

☒ Boiler

Codes 0010-1999

☐ Generator

Codes 4500-4899

☐ Regulatory, Safety, Environmental

Codes 9504-9720

☐ Balance of Plant

Codes 3110-3999

☐ Pollution Control Equipment

Codes 8000-8835

☐ Others

Codes 9900-9999

☐ Steam Turbine

Codes 4000-4499

☐ External

Codes 9000-9040

Cause Code Ranges / Affected Component

(Select One)



Cause Code / Component Problem

(Select One)



Comments

Exhibit H

PROJECT OPERATING RESTRICTIONS

Operational characteristics of the Project must be equal to or greater than the resource flexibility reflected in the resource Master File, as such term is defined in the CAISO Tariff. Buyer may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project and to ensure that the information provided by Seller is true and accurate. Seller agrees to coordinate with Buyer and any third party Scheduling Coordinator to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are actually based on physical characteristics of the resource. The Parties agree to make reasonable modifications to this Exhibit H to modify existing operating restrictions or add additional operating restrictions that may be necessary to address changes in the CAISO Tariff or applicable Law applicable to the Products provided from this Project.

- Nameplate capacity of the Project: ____MW
- Minimum operating capacity: ____MW
- Advance notification required for a Dispatch Notice: ____
- Ramp Rate: ____MW/minute

**WSPP AGREEMENT
CONFIRMATION
BETWEEN
SAN DIEGO GAS & ELECTRIC COMPANY
AND
[INSERT NAME]**

This confirmation letter ("Confirmation") confirms the transaction ("Transaction") between **San Diego Gas & Electric Company** ("Seller" or "SDG&E" "Party B") and _____ ("Buyer" or "Party A"), each individually a "Party" and together the "Parties", effective as of _____, 2024 (the "Confirmation Effective Date"). This Transaction is governed by the **[for EEI: Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement"); for WSPP: Western Systems Power Pool Agreement, dated September 11, 2023 (the "WSPP Agreement")** effective as of September 11, 2023] along with any amendments and annexes executed between the Parties thereto (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement." Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement, Tariff, or in the RPS (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

Contact Information:	Name: [INSERT] ("Buyer")	Name: San Diego Gas & Electric Company ("Seller")
	All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:	All Notices: San Diego Gas & Electric Company 8315 Century Park Court CP 21D San Diego, CA Zip: 92123 Attn: Electric & Fuel Procurement Contract Administration Phone: (858) 650-6176 Facsimile: (858) 650-6190 Duns: 006911457 Federal Tax ID Number: 95-1184800
	Invoices:	Invoices: San Diego Gas & Electric Company 8315 Century Park Ct. San Diego, California 92123-1593 Attn: Energy Accounting Manager Phone: (858) 650-6186 Facsimile: (858) 650-6190
	Wire Transfer:	Wire Transfer: BNK: Union Bank of California 445 South Figueroa Street Los Angeles CA 90071 Payee: San Diego Gas & Electric Company ABA: Routing # 122000496 ACCT: #4430000352 Confirmation: SDG&E, Major Markets

	Credit and Collections:	Credit and Collections: San Diego Gas & Electric Company 8326 Century Park Ct. San Diego, California 92123-1593 Attn: Energy Risk ManagerPhone: (858) 650-6190 Email: sdge_mmcredit@sdge.com
	Defaults: With additional Notices of an Event of Default or Potential Event of Default to:	Defaults: With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Ct. San Diego, California 92123 Attn: General Counsel Phone: (858) 650-6141

ARTICLE 1 COMMERCIAL TERMS

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Product:	The “Product” is Firm Delivery Obligation of Green Attributes in the Contract Quantity. During the Delivery Term, Seller shall deliver and sell, and Buyer shall purchase and receive, this Product, subject to the terms and conditions of this Confirmation. Seller shall not substitute or purchase any Green Attributes from any generating resource other than the Project for delivery hereunder.
Project:	All Product sold hereunder shall be from one or more of the facilities, each meeting the requirement of 6.1(a) and as listed in Exhibit A, as may be updated from time to time by written notice from Seller to Buyer (collectively, the “Project”). The Parties acknowledge and agree that the Project consists of a pool of facilities and that Seller is permitted to utilize one or more of these pooled facilities in order to satisfy its obligations hereunder. The Parties further acknowledge and agree that, with respect to Section 3.2(a) of this Confirmation, Product shall solely be limited to the actual Product generated and delivered by the pooled facilities used to satisfy the Contract Quantity, and that Buyer is not entitled to any additional Product produced by the pooled facilities in the Project above and beyond the Contract Quantity.
Contract Quantity:	“Contract Quantity” shall be equal a total of [____] MWhs during the Delivery Term. In the event Seller does not deliver any of the above specified quantity(ies) for any reason, except as excused by Uncontrollable Force, the Parties shall agree upon the make-up schedules for any undelivered quantities. If the Parties are unable to come to agreement on such make-up schedule, Buyer shall deliver the quantities to Seller in a reasonable manner and within a reasonable time.
Contract Price:	The Green Attributes Price.
Green Attributes Price:	\$[XXXX] per MWh of Green Attributes (RECs).
Term:	The “Term” of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Seller to Buyer of the Contract Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Condition Precedent or as otherwise provided in the Agreement.
Delivery Term:	SDG&E shall deliver the Product to Buyer within five (5) Business days after CPUC Approval, or as otherwise set forth in the “Contract Quantity” Section. For purposes of this Confirmation, the “Delivery Term” shall be the duration upon which the Product is delivered.

Firm Delivery Obligation:	“Firm Delivery Obligation” means the obligation to provide the Contract Quantity is a firm obligation in that Seller shall deliver the quantity of the Product from the Project consistent with the terms of this Confirmation without excuse other than Uncontrollable Force. If a failure by Seller to deliver the quantity from the Project is not excused by Uncontrollable Force, Seller shall make up such failure in accordance with the “Contract Quantity” Section.
Delivery	Buyer hereby authorizes Seller, or its third party designee, to deliver the Product, or cause the Product to be delivered into Buyer’s WREGIS account in the quantity(ies) and timeline(s) set forth in the “Contract Quantity” Section.
Condition Precedent:	Seller’s obligation to sell and deliver the Product shall be contingent upon the Seller obtaining or waiving CPUC Approval of this Confirmation. Either Party has the right to terminate this Confirmation upon notice, which will be effective five (5) Business Days after such notice is given, if the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (iii) the final and non-appealable approval by the CPUC has not been obtained by Seller, on or before [INSERT DEADLINE DATE]. The date on which approval of the CPUC of this Confirmation has been obtained or waived, by Seller, in its sole discretion, shall hereinafter be the “Condition Precedent Satisfaction Date.” Any termination made by a Party under this section shall be without liability or obligation to the other Party. Notwithstanding any other provision in this Confirmation, Seller will have no obligation to transfer Green Attributes to Purchaser unless the Condition Precedent Satisfaction Date has occurred.

ARTICLE 2 DEFINITIONS

“Buyer” means “Purchaser”.

“CAISO” means the California Independent System Operator.

“Condition Precedent Satisfaction Date” means the date on which CPUC Approval, as fully described in the “Condition Precedent” provision, has been obtained or waived, by Seller, in its sole discretion.

"CPUC" means the California Public Utilities Commission or its regulatory successor.

"CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, subject to CPUC review of the Seller's administration of the Agreement.

Notwithstanding the foregoing, if a Tier 2 or Tier 3 advice letter process is used to obtain CPUC Approval of this Agreement, CPUC Approval will also be deemed to have occurred on the date that a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings becomes final and non-appealable.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;
- (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹
- (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy.

Green Attributes do not include;

- (i) any energy, capacity, reliability or other power attributes from the Project,
- (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Tariff" means the tariff and protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

"Vintage" means the calendar year and month in which the underlying energy for the Product is generated.

"WREGIS" means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

"WREGIS Certificate" means "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

"WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS.

ARTICLE 3

CONVEYANCE OF RENEWABLE ENERGY

3.1 Seller's Conveyance Of Green Attributes

Except as stated in this Section 3.1, Seller shall deliver and sell, and Buyer shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Seller will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Uncontrollable Force.

Should any Green Attributes provided by Seller under this Confirmation be determined to have originated from a resource other than the Project, Seller shall remedy such failure in a manner reasonably acceptable to Buyer within a reasonable period of time after written notice of such failure is given to the Seller by the Buyer.

3.2 Seller's Conveyance Of Green Attributes

(a) The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below.

(b) Green Attributes Initially Credited to Seller's WREGIS Account

During the Delivery Period, Seller, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Seller hereunder shall be designated California RPS-compliant with WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules.

ARTICLE 4

PERFORMANCE ASSURANCE; CPUC FILING AND APPROVAL

4.1 Performance Assurance

(a) To secure its obligations under this Agreement, Buyer agrees to deliver to Seller and maintain in full force and effect Performance Assurance in the amount of ***\$(INSERT AMOUNT)*** in the form of cash or a Letter of Credit from the Execution Date and for the Delivery Term of this Agreement.

(b) Buyer hereby grants to Seller a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Seller, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Seller's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event

of Default by Seller or an Early Termination Date as a result thereof, Seller may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Seller free from any claim or right of any nature whatsoever of Buyer, including any equity or right of purchase or redemption by Buyer. Seller shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Buyer's obligations under the Agreement (Buyer remaining liable for any amounts owing to Seller after such application), subject to Seller's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

- (c) Upon an Event of Default of Buyer prior to CPUC Approval, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the Performance Assurance and Seller may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Buyer prior to CPUC Approval would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to CPUC Approval.

4.2 [INSERT additional credit terms depending on term, etc.]CPUC Filing and Approval

Within [INSERT] days after the Confirmation Effective Date, Seller shall file with the CPUC the appropriate request for CPUC Approval of this Agreement and possibly other agreements. Seller shall seek CPUC Approval of the filing, including promptly responding to any requests for information related to the request for CPUC Approval. Buyer shall use commercially reasonable efforts to support Seller in obtaining CPUC Approval. Seller and Buyer have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which fails to meet the requirements contained in the Condition Precedent section. Notwithstanding anything to the contrary in the Confirmation, Seller shall not have any obligation or liability to Buyer or any third party for any action or inaction of the CPUC or other Geovernmental Authority affecting the approval or status of this Confirmation as a transaction eligible for content category, as defined in California Public Utilities Code Section 399.16(b) (1).

ARTICLE 5 COMPENSATION

5.1 Monthly Cash Settlement Amount

Purchaser shall pay Seller in the amount equal to (the product of \$[INSERT PRICE] multiplied by the quantity of Green Attributes (in MWhs) delivered or credited to Purchaser's WREGIS account pursuant to Section 3.2 during the applicable Calculation Period.

5.2 Payment Date

Seller shall issue an invoice to Buyer promptly after delivery of the Product into Buyer's WREGIS account, as set forth in the Contract Quantity Section and the Condition Precedent Section. Such invoice shall set forth in reasonable detail the quantity of Green Attributes transferred, the price, and the total payment owed to Buyer. Notwithstanding any provision to the contrary in *[for EEI: "Section 6.2 of the Master Agreement"; for WSPP: "Section 9.2"]* of the Master Agreement, payment shall be due and payable shall

be made to Seller within ten (10) Business Days , or, if such day is not a Business Day, then on the next Business Day, following receipt of an invoice issued by Seller. The invoice shall include a statement detailing the quantity of Product transferred to Purchaser.

Invoices to Buyer will be sent by Excel/PDF format via email to: **[TO BE INSERTED]**

Attn:

Email:

Phone:

Facsimile:

For purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon the receipt of the Excel/PDF format of the invoice.

Payment to Seller shall be made by electronic funds transfer pursuant to the following:

BNK: Union Bank of California
For: San Diego Gas & Electric Company
ABA: Routing # 122000496
ACCT: #4430000352
Confirmation: SDG&E, Major Markets
FAX :(213) 244-8316

With a copy to:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Energy Accounting Manager
Phone: (858) 650-6177
Facsimile: (858) 650-6190

ARTICLE 6

SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS RELATED TO GREEN ATTRIBUTES

6.1 Seller's Representation, Warranties, and Covenants Related to Green Attributes

- (a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:
 - (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
 - (ii) To the extent the Product includes the Project's output, the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as

set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation.

To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

The term “commercially reasonable efforts” as set forth in Sections 6.1 (a) and (b) above shall not require Seller to incur out-of-pocket expenses in excess of \$[INSERT] in the aggregate in any one calendar year between the Confirmation Effective Date and the last day of the Term.

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

For the avoidance of doubt, the term “contract” as used in the immediately preceding paragraph means this Agreement.

(d) In addition to the foregoing, Seller warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

- (i) Seller has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
- (ii) Seller has not sold the Product to be delivered under this Confirmation to any other person or entity; and
- (iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.

ARTICLE 7

GENERAL PROVISIONS

7.1 [Reserved]

7.2 Governing Law/Venue

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. The Parties hereby irrevocably and unconditionally agrees that any legal action or proceeding with respect to this Agreement shall be brought in the courts of the State of California in the County of San Diego or the courts of the United States in the County of San Diego, and by executing and delivering this Agreement, both Parties hereby submit to and accept irrevocably and unconditionally, the jurisdiction of the above mentioned courts. The foregoing, however, shall not limit the right of either Party as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction.

7.3 Sovereign Immunity

[NOTE TO BIDDERS: insert only if applicable to governmental agencies, etc.] For purposes of this Confirmation only, the Agreement is amended by adding the following new provision: “Purchaser hereby waives sovereign immunity with regard to disputes relating to this Confirmation.”

7.4 Confidentiality Amendment to WSPP Agreement.

Changes to the WSPP shall apply to this Confirmation only. For purposes of this Confirmation, **[for EEI: “Section 10.11 of the Master Agreement”; for WSPP: “Section 30”]** (Confidentiality) of the **[INSERT: “EEI” OR “WSPP”]** Agreement is deleted in its entirety and replaced with the following:

“[INSERT: “10.11” OR “30.1(a)”] Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party’s Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer’s Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to **[for EEI: “Section 10.11 of the Master Agreement”; for WSPP: “Section 30.1(b)”]** of this Agreement; (v) in order to comply with any applicable law, regulation, including, but not limited to, the California Public Records Act and/or the California Ralph M Brown Act, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this **[for EEI: “Section 10.11 of the Master Agreement”; for WSPP: “Section 30.1(a)”]** (“Disclosure Order”) each Party shall, to the extent practicable, use reasonable efforts within its sole and absolute discretion to pursue rights under such applicable laws, regulations, rules or orders which allow for the prevention or limitation of such disclosure. The Disclosing Party’s determination of what efforts might be reasonable shall not be subject to challenge by the other Party. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) RPS Confidentiality. Notwithstanding **[for EEI: “Section 10.11 of the Master Agreement”; for WSPP: “Section 30.1(a)”]** of this Agreement, at any time on or after the date on which the Seller makes its filing seeking CPUC approval for this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Term, project location, Contract Capacity, Contract Quantity, and Delivery Point.

(c) Publicity. Except as otherwise agreed to in this **[for EEI: “Section 10.11 of the Master Agreement”; for WSPP: “Section 30.1”]** above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.” Notwithstanding the foregoing, the Parties understand acknowledge and agree that Buyer is a

California Public Agency and that certain actions and documents of Buyer are subject to public notice and/or disclosure under applicable laws and regulations, including, but not limited to, the California Public Records Act and/or the California Ralph M. Brown Act, and that Buyer is not obligated to seek prior approval of Seller when Buyer is complying, in its sole and absolute discretion, with such laws and regulations.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC COMPANY [INSERT NAME OF PURCHASER]

BY: _____

BY: _____

NAME:

NAME:

TITLE: Vice President -Energy Supply

TITLE:

_____ APPROVED AS TO LEGAL FORM

EXHIBIT A

TO THE CONFIRMATION BETWEEN _____ AND SAN DIEGO GAS & ELECTRIC COMPANY
DATED: _____

PROJECT FACILITY(IES)

Name of Facility	Resource	Capacity (MW)	CEC RPS ID	WREGIS GU ID	Host Balancing Authority

EXHIBIT B

TO THE CONFIRMATION BETWEEN _____ AND SAN DIEGO GAS & ELECTRIC COMPANY
DATED: _____

CONTRACT QUANTITIES

	YEAR					
MONTH	YR	YR	YR	YR	YR	YR
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						

EXHIBIT C

FORM OF LETTER OF CREDIT

[DATE]

To: San Diego Gas & Electric Company
555 W. Fifth Street
Mail Code: ML 18A3
Los Angeles, CA 90013

Re: Our Irrevocable Standby Letter of Credit No. _____
In the Amount of US\$ _____

Ladies and Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Beneficiary] ("Beneficiary"), by order and for account of [name of Applicant] ("Applicant"), [address of Applicant], available at sight upon demand at our counters, at [location] for an amount of US\$ _____ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

1. Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "[name of Applicant] ("Applicant") is in default under the WSPP Agreement and Confirmation between Beneficiary and Applicant dated _____ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a "default", "event of default" or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. \$ _____."
2. Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. \$ _____."

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.
- Partial and multiple drawings are permitted.
- Fax of Document 1 or 2 or 3 above is acceptable. Notwithstanding anything to the contrary herein, any drawing hereunder may be requested by transmitting the requisite documents as described above to us by facsimile at _____ or such other number as specified from time to time by us. The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Beneficiary that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1, 2, or 3 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one-year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 ("UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

Authorized Signature(s)

EXHIBIT C

**SDG&E DIRECT TESTIMONY OF KENDALL K. HELM (ELECTRIC
AND FUEL PROCUREMENT) (OCTOBER 2017) IN THE 2019 GRC
PROCEEDING (A.17-10-007)**

Exhibit D
2021 SDG&E ERRRA Menvielle - Kendall K. Helm's 2019 GRC Testimony

Company: San Diego Gas & Electric Company (U 902 M)
Proceeding: 2019 General Rate Case
Application: A.17-10-_____
Exhibit: SDG&E-12

**SAN DIEGO GAS AND ELECTRIC
DIRECT TESTIMONY OF KENDALL K. HELM
(ELECTRIC AND FUEL PROCUREMENT)**

October 6, 2017

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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SUMMARY

ELECTRIC & FUEL PROCUREMENT (In 2016 \$)			
O&M			
	2016 Adjusted-Recorded (000's)	TY 2019 Estimated (000's)	Change (000's)
Total Non-Shared Services	7,962	8,641	679
Total Shared Services (Incurred)	0	0	0
Total O&M	7,962	8,641	679

Capital	2017 (\$000)	2018 (\$000)	2019 (\$000)
	\$0	\$0	\$0

Summary of Requests

- San Diego Gas & Electric Company (SDG&E) requests that the California Public Utilities Commission (CPUC) adopt its proposal for \$8.7 million of operations and maintenance (O&M) expenses for the function of procuring electricity for SDG&E's 3.6 million customers.
- SDG&E's focus is on aligning and repurposing labor responsibilities in Electric and Fuel Procurement (E&FP) to maintain the required expertise in order to sustain its mission of providing clean, safe, and reliable energy under an evolving technology and regulatory landscape. Accordingly, this request includes an approximate \$700,000 increase in O&M expenses relative to the 2016 adjusted recorded amounts primarily due to vacancies in 2016 that have to be filled and/or repurposed for E&FP to succeed at this mission. The \$8.7 million request is consistent with O&M expenses recorded in prior years.
- Going forward, a five-year historical average was used as the forecast methodology to develop the 2019 cost forecast because, while procurement roles and priorities are evolving, the overall responsibility to procure adequate supplies of power remains consistent over time.

- Also included in this testimony, SDG&E provides a description of the need for certain technology upgrades required to maintain its legal obligation to provide scheduling services within the California Independent System Operator (CAISO) market. The associated capital costs are requested in the Direct Testimony of Chris Olmsted, Chapter SDG&E-24.

**SDG&E DIRECT TESTIMONY OF KENDALL K. HELM
(ELECTRIC AND FUEL PROCUREMENT)**

I. INTRODUCTION

A. Summary of Electric and Fuel Procurement Costs and Activities

My testimony supports the Test Year (TY) 2019 forecasts for O&M costs for non-shared services and the need for certain CAISO-related technology upgrades associated with the E&FP function for SDG&E. Table KKH-1 summarizes my sponsored costs. The associated capital costs for technology upgrades are included in the Direct Testimony of Chris Olmsted, Chapter SDG&E-24.

**Table KKH-1
Summary of Total Costs**

ELECTRIC & FUEL PROCUREMENT (In 2016 \$)			
Categories of Management	2016 Adjusted- Recorded (000s)	TY 2019 Estimated (000s)	Change (000s)
A. Long Term Procurement	1,762	2,203	441
B. Trading & Scheduling	2,830	2,949	119
C. Mid and Back Office	3,370	3,489	119
Total Non-Shared Services	7,962	8,641	679

This testimony requests approval for approximately \$8.7 million of annual O&M costs for E&FP to fulfill its responsibility for planning, procuring, managing, and administering the energy supply resources needed for SDG&E to deliver clean, safe, and reliable electricity to its approximate 3.6 million customers.¹ Since 2013, the value of these supply resources has exceeded \$1.2 billion dollars on an annual basis, and in 2016, 43 percent of the electricity supplied to customers was from renewable sources. E&FP meets customer demand by acquiring both long-term and short-term resources, optimizing those resources in the wholesale energy and ancillary services markets, prudently administering contracts, and accurately settling all energy procurement transactions. To meet state policy goals and comply with legislative and regulatory requirements, E&FP also develops comprehensive procurement strategies and tools to capture the benefits of clean and evolving technologies, such as energy storage, demand response, and

¹ E&FP procures electricity for its bundled customer load, which represents the total demand from those customers that buy the commodity of electricity from SDG&E.

distributed energy resources. While costs for electricity supply are forecasted and recorded in SDG&E's Energy Resource Recovery Account (ERRA), E&FP's O&M costs² are part of the General Rate Case (GRC).

In addition to sponsoring my own organization's costs, my testimony supports the need for technology upgrades to enable SDG&E to maintain its legal obligation to provide scheduling services within the CAISO market. The associated capital costs are requested in the Direct Testimony of Mr. Olmsted, (Ex. SDG&E-24).

B. Summary of Costs Related to the Voluntary Retirement Enhancement Program

Sempra Energy (including SDG&E and SoCalGas) implemented a Voluntary Retirement Enhancement Program (VREP) in 2016, designed to offer savings from operating efficiencies, optimized business processes, and enhanced overall operations. Within E&FP, four people elected to take this program. Across the department, E&FP leveraged existing expertise and process improvements to enable repurposing of their labor responsibilities toward future priorities. In addition, one position was associated with essential hourly resource management activities and had to be backfilled.

C. Organization of Testimony

My testimony is organized as follows:

- Description of the activities, non-shared cost forecast and cost drivers for:
 - Long-Term Procurement
 - Trading and Scheduling
 - Middle-Office and Back-Office
- Description of required technology upgrades for capital costs referenced by Mr. Olmsted (Ex. SDG&E-24).
- Conclusion

² Exclusive of applicable software and subscription costs used exclusively for purposes of energy procurement-related requirements, which may be recovered through ERRR (for example, Tullett Prebon pricing subscriptions used exclusively for SRAC price indices).

II. NON-SHARED COSTS

“Non-Shared Services” are activities that are performed by a utility solely for its own benefit. Table KKH-2 summarizes E&FP’s total non-shared O&M forecasts for the listed cost categories.

Table KKH-2
Non-Shared O&M Summary of Costs

Labor	2016 Adjusted- Recorded (000s)	2017 Adjusted- Forecast (000s)	2018 Adjusted- Forecast (000s)	2019 Estimated (000s)
Long Term Procurement	1,663	1,955	1,955	1,955
Trading & Scheduling	2,263	2,333	2,333	2,333
Mid and Back Office	2,525	2,429	2,429	2,429
Total	6,451	6,717	6,717	6,717

Non-labor	2016 Adjusted- Recorded (000s)	2017 Adjusted- Forecast (000s)	2018 Adjusted- Forecast (000s)	2019 Estimated (000s)
Long Term Procurement	100	248	248	248
Trading & Scheduling	568	616	616	616
Mid and Back Office	844	1,060	1,060	1,060
Total	1512	1924	1924	1924

FTE	2016 Adjusted- Recorded (000s)	2017 Adjusted- Forecast (000s)	2018 Adjusted- Forecast (000s)	2019 Estimated (000s)
Long Term Procurement	12.6	14.7	14.7	14.7
Trading & Scheduling	19.5	20.4	20.4	20.4
Mid and Back Office	24.3	24.6	24.6	24.6
Total	56.5	59.8	59.8	59.8

1 **A. Long-Term Procurement**

2 Long-Term Procurement functions include the Vice President of Energy Supply and the
3 Origination and Portfolio Design (O&PD) department.

4 **1. Description of Costs and Underlying Activities**

5 The Vice President of Energy Supply provides direction and officer oversight for E&FP,
6 Electric Generation, and Resource Planning. This involves overseeing about 115 employees
7 across eight different departments including O&PD, Trading and Scheduling, and E&FP Back-
8 Office functions. Overall, the Vice President of Energy Supply is responsible for providing
9 strategic direction consistent with and complementary to SDG&E's wider mission, developing
10 policies to strengthen and enhance energy supply functions and performance, and ensuring that
11 all energy procurement is conducted consistent with internal requirements, Commission rules
12 and decisions, and CAISO tariffs.

13 O&PD is responsible for soliciting energy supplies from independent producers and
14 utility-owned resources to meet SDG&E's long-term energy and capacity requirements. For
15 supplies from independent producers, O&PD negotiates and executes Power Purchase
16 Agreements (PPAs). At the end of 2016, E&FP's portfolio included 72 PPAs for 4,774
17 Megawatts (MW) of energy and capacity under contract terms ranging from 1 year to 30 years.³
18 The parties to these contracts include, among others, large independent power suppliers, Diverse
19 Business Enterprises, power marketers, and municipalities. Long-term resources include
20 demand response, solar, wind, biomass, small hydro, combined heat and power, conventional
21 generation, and energy storage.

22 To develop long-term procurement plans and implement legislative mandates, O&PD
23 regularly participates in regulatory proceedings and interfaces with numerous government
24 agencies, including the CPUC, the California Energy Commission, and the California Air
25 Resources Board. As an example, the Long-Term Procurement Plan (LTPP)⁴ is a reoccurring
26 two year CPUC proceeding that integrates all E&FP's activities in carrying out the CPUC's
27 preferred loading order for resource additions. Other proceedings where O&PD plays an active
28 role include those for the Renewable Portfolio Standard (RPS), the Integrated Distributed Energy

³ Figures include projects both in construction and operation and reflects data as of December 31, 2016.

⁴ SDG&E's most recent LTPP (2014 LTPP, Advice Letter 2850-E-A) was approved by the CPUC via disposition letter and became effective February 19, 2016.

1 Resources Program, the Green Tariff Shared Renewables Program, and various other
2 procurement programs targeting energy storage, demand response, biogas, and small scale
3 renewables. O&PD also provides input into long-range resource planning models and regularly
4 administers data requests pertaining to E&FP's resource valuation approach and RPS position.

5 Consistent with approved procurement plans, O&PD then acquires energy resources
6 according to the rules established by the CPUC through competitive solicitations and bilateral
7 negotiations. Competitive solicitations are conducted by issuing a Request for Offers (RFO) to
8 potential parties, developing a valuation model and methodology, evaluating bids submitted, and
9 selecting the most cost-effective resources to meet the RFO objectives. Common to all RFOs,
10 O&PD requests and reviews information on affordability, as well as the presence of safety plans
11 and standards and reliability performance guarantees. Bilateral negotiations are conducted when
12 opportunities and circumstances for acquiring the optimal resources at the optimal time are both
13 unique and fleeting.⁵ To conduct procurement of utility-owned resources, O&PD follows a
14 strict code of conduct that governs communications and defines roles within and outside the
15 team.⁶ For all forms of long-term procurement, O&PD works with an approved Independent
16 Evaluator.

17 Following the activities directly related to a solicitation, O&PD then negotiates with
18 independent suppliers who have winning bids to execute a final contract. Bid evaluation, bid
19 selection, and contract negotiation practices and principles for RFOs are largely similar to those
20 for bilateral negotiations and all PPAs executed by O&PD must be approved by the CPUC as
21 falling within the authorized need identified in the LTPP, RPS procurement plan, and/or other
22 state or CPUC-mandated procurement program. Of note, O&PD must also develop PPA
23 language for new product types that have not been solicited before. For example, in 2016,
24 O&PD had to develop a PPA for demand response products that were bid into an all-source
25 solicitation and, in 2017, O&PD is developing a PPA for distributed resources that will be
26 required to offset traditional distribution system investments.

27 Once PPAs have been executed and approved by the Commission, O&PD is responsible
28 for oversight and contract administration of a project through construction and development.
29 These responsibilities include exercising contractual options in a prudent manner, verifying that

⁵ SDG&E 2014 Long Term Procurement Plan at 32-33, Advice Letter 2850-E-A.

⁶ Decision (D.) 07-12-052 at 206.

1 conditions precedent to the agreement have been satisfied, monitoring project designs, schedules,
2 and milestones so that the project being constructed meets the stated performance in the contract,
3 and coordinating internal SDG&E functions necessary to meet all the terms and conditions of the
4 agreement. Once a project is in operation, contract administration activities are conducted by
5 E&FP's Back-Office functions. However, at all times, O&PD assists with renegotiating contract
6 provisions as necessary due to changed circumstances or conditions and resolving disputes as
7 required.

8 Throughout the process, O&PD, together with the other E&FP departments, meets
9 monthly with its Procurement Review Group (PRG) to address a variety of SDG&E procurement
10 issues and transactions. The PRG consists of "non-market participants" who sign non-disclosure
11 agreements, and includes the CPUC Energy Division, the Office of Ratepayer Advocates, and
12 The Utility Reform Network, among others. The PRG's purpose is to review and assess the
13 details of an Investor Owned Utility's overall procurement strategy and specific proposed
14 procurement contracts and processes prior to submitting filings to the CPUC.⁷

15 To support the company's goals of becoming the cleanest, safest, most reliable energy
16 company in America, Long-Term Procurement seeks to create an optimal energy resource
17 portfolio to meet both state policy objectives and customer interests, while supplying safe and
18 reliable electricity to the grid. Consistent with this mission, SDG&E provided our customers
19 with 43 percent renewable energy in 2016 and added the world's largest lithium-ion energy
20 storage project to our portfolio.

21 **2. Forecast Method**

22 The forecast method developed for this cost category is a five-year historical average.
23 This is most appropriate because, while work priorities can vary from year to year, Long-Term
24 Procurement responsibilities in their entirety remain intact. As described in more detail below,
25 activities associated with monitoring contracts in development have been reduced. However,
26 activities associated with the procurement regulatory landscape and for valuing and negotiating
27 contracts for new resource types has become much more complex. As a result, vacancies in
28 2016 must be backfilled and repurposed to meet these changing needs. Using a five-year cost
29 average allows E&FP to reflect evolving Long-Term Procurement priorities and yields a

⁷ D.02-08-071 at 25.

1 TY 2019 forecast that includes labor costs of \$1,955,000 and non-labor costs of \$248,000, with
2 14.7 full-time equivalent employees (FTEs).

3 **3. Cost Drivers**

4 Cost drivers behind this forecast are related to changes in the electric procurement
5 environment. While annual procurement levels vary, activities requiring Long-Term
6 procurement expertise are growing in number and complexity as California moves to a 50
7 percent RPS goal by 2030 and the CPUC moves toward an integrated resource planning process.
8 Currently, E&FP must comply with between 10 to 15 different procurement mandates. At the
9 same time, the CPUC is seeking in depth data and analysis from SDG&E regarding wholesale
10 changes to the way electric procurement is conducted in the state, including discussion of full
11 retail choice. In addition to regulatory responsibilities, the solicitation process is becoming more
12 varied and complex. Least-cost best-fit valuation methodologies are evolving, transparency rules
13 are being evaluated, and O&PD must assess the role of factors that are difficult to measure, such
14 as societal costs and benefits. In addition, O&PD is charged with designing and implementing
15 an RFO process and PPAs for new product types that support maturation of developing
16 technologies in the marketplace while ensuring risks are mitigated and customers receive a
17 reliable product. Perhaps the most challenging among these activities is the need to develop and
18 implement a PPA for a third-party distributed resource that will displace traditional distribution
19 system investments and guarantee the same level of performance to prevent outages. Along with
20 energy efficiency and demand response, energy storage and distributed resources entail new and
21 different operational issues and risks that must be identified and mitigated by expert negotiators
22 to protect bundled customers' interests. Optimizing E&FP's long-term portfolio is a valued
23 service provided to customers and Long-Term Procurement's cost forecast is designed to
24 maintain SDG&E's required expertise.

25 **B. Trading and Scheduling**

26 Trading and Scheduling refers to activities conducted by the Energy Supply & Dispatch
27 (ES&D) department, which includes Electric Procurement & Trading, Market Analysis, Electric
28 Fuels, and Market Operations.

29 **1. Description of Costs and Underlying Activities**

30 The ES&D department optimizes SDG&E's generation and contracted resources within
31 the CAISO markets to serve bundled customers in a least-cost dispatch manner and consistent

1 with Commission-approved procurement plans. In 2016, ES&D managed electric supply
2 resources to meet a peak load of over 64,000 megawatt hours. To support these activities, ES&D
3 personnel have advanced and specific CAISO market expertise and leverage several information
4 management systems across functions, including Power Costs System Inc. (PCI), YES Energy,
5 and Morningstar.

6 Within ES&D, Electric Procurement & Trading performs short-term planning,
7 procurement, and trading functions for transactions inside of a five-year time horizon. Planning
8 activities include developing short-term forecasting methodologies, performing short-term power
9 planning studies and regulatory analysis, and assessing changes in tariffs and regulations
10 governing least-cost dispatch of electric and gas portfolios. Electric Procurement & Trading is
11 also responsible for all short-term electricity transactions related to dispatchable generation,
12 including executing all trades, purchases, hedges and sales to manage the electricity supply
13 portfolio consistent with SDG&E's LTPP.⁸ In addition, Electric Procurement & Trading is
14 responsible for procuring gas needed for dispatchable generation and for performing gas
15 scheduling on the electronic bulletin boards of the interstate and intrastate pipelines it uses to
16 deliver fuel to its gas-fired resources, including SDG&E-owned resources and contracts for
17 tolling resources.

18 Market Analysis performs day-ahead demand forecasting, conducts analysis of daily
19 portfolio performance, conducts generation outage planning, and seeks to optimize ES&D's
20 scheduling and bidding strategies. Market Analysis must also comply with various reporting
21 requirements related to its least-cost dispatch operations, including the ERRR Compliance
22 regulatory filing and the CPUC quarterly compliance report. Market Analysis is further
23 responsible for SDG&E's greenhouse gas (GHG) compliance activities. To meet GHG
24 compliance requirements, Market Analysis develops and implements policies for procuring GHG
25 allowances and offsets in compliance with the limits established in the LTPP and conducts
26 necessary reporting related to those activities.

27 Electric Fuels oversees the scheduling and dispatch functions. Electric Fuels staffs a
28 Real-Time desk to perform these functions 24 hours a day and has responsibility for scheduling

⁸ Hedging is a risk management strategy used to limit the probability of loss from fluctuations in the prices of commodities. Generally, this involves taking market positions that maintain the price risk exposure associated with E&FP's portfolio within the customer risk tolerance limits set by the CPUC. Limits are set in the LTPP.

resources into the CAISO's day-ahead, hour-ahead, and 15-minute markets. In addition to scheduling SDG&E's own generating capacity, Electric Fuels schedules and dispatches most resources contracted under E&FP's 73 PPAs and serves as the point of contact for daily operational administration of those resources. Electric Fuels is responsible for complying with CAISO dispatch instructions in accordance with Federal Energy Regulatory Commission (FERC) approved tariffs and protocols and for ensuring all scheduling and market dispatch functions comply with all rules and regulations.

Market Operations manages compliance with annual and monthly Resource Adequacy (RA) requirements, including purchases of short-term resources as needed. To fulfill this responsibility, Market Operations supports RA solicitations, prepares system and local RA filings at the CPUC, and demonstrates that they have procured sufficient capacity resources, including reserves, needed to serve aggregate monthly system load. Market Operations also participates in CAISO-related meetings and working groups to monitor changes at the CAISO and to anticipate associated impacts on SDG&E's operations and portfolio costs.

Through effective and efficient management of the daily and short-term electricity needs of customers, ES&D plays a central role in contributing to SDG&E's clean, safe, and reliable energy goals. ES&D provides this essential service 24 hours a day, seven days a week and is the first point of contact for all resources procured on customers' behalf.

2. Forecast Method

The forecast method developed for this cost category is a five-year historical average. This is most appropriate because, while ES&D costs vary from year to year with short-term vacancies and periodic system investments, overall responsibilities remain consistent over time. For example, between 2012 and 2016, E&SD costs exceeded \$3 million in both 2012 and 2014 due in part to costs associated with periodic maintenance of data systems used for daily resources scheduling. In 2013 and 2016, however, ES&D costs were below average due in part to temporary vacancies. Using a five-year average reduces variability between years and is consistent with the forecast methodology chosen for the other cost categories in my testimony and throughout most of this GRC application. Using this approach, ES&D's 2019 forecast includes labor costs of \$2,333,000 and non-labor costs of \$616,000, with 20.4 FTEs.

3. Cost Drivers

ES&D must on a daily basis buy all the electricity it needs from the CAISO markets to serve SDG&E's 3.6 million customers and sell all SDG&E-owned generation and all SDG&E contracted resources to the CAISO markets to offset E&FP's energy procurement expenses. This daily procurement process of buying and selling electricity must be done per Least-Cost Dispatch requirements set forth by the CPUC and consists of complex energy transactions with large dollar values. ES&D has already leveraged its existing expertise and procurement systems to absorb the increased scheduling activities associated with the two new conventional resources added in 2012 and the approximately 32 renewable generation resources that have come on line since 2012. In 2017, ES&D also began absorbing additional scheduling activities associated with 37.5 MW of energy storage that was added to the portfolio and is developing further expertise to reliably manage a portfolio with rising levels of rooftop solar. Looking ahead, the scope, complexity, and importance of E&SD's work will continue to require skilled and competent personnel, accurate and efficient information management systems, and regular training.

C. Middle-Office and Back-Office

Middle-Office and Back-Office functions include the Energy Risk Management (Energy Risk) department and the Settlements and Systems (S&S) department.

1. Description of Costs and Underlying Activities

The Energy Risk department is responsible for all Middle-Office functions, including identifying, managing, monitoring, and reporting on market, credit, financial and operational risks associated with E&FP functions. Energy Risk conducts daily reviews of E&FP's physical and financial positions, including trader authority limits, counterparty credit risk positions, and compliance with financial liquidity and margin requirements. To comply with Commission-approved risk metrics⁹ and internal policies, Energy Risk reviews daily market pricing data, forward price curves, volatilities, and correlations used for the evaluation and measurement of portfolio risk. On an ongoing basis, Energy Risk performs hedging portfolio analysis and supports ES&D in the development of procurement and hedge plans, consistent with the Commission approved LTPP, and monitors ES&D's compliance with approved plans.

⁹ D.12-01-033 and D.15-10-031.

1 Energy Risk develops, maintains and supports all trading and risk management models
2 and applications, including modeling new technologies and facilities, enforcement of operational
3 risk controls related to the execution, recording, and valuation of trades. Energy Risk is
4 responsible for compliance with Dodd-Frank requirements, Sarbanes-Oxley (SOX) 404
5 compliance, and FERC-required reporting of fixed price transactions to index publishers.

6 Energy Risk also assesses credit exposure for various contracts and transactions,
7 including long-term PPAs, RA transactions, contract amendments, etc. The group works with
8 O&PD in determining credit terms and conditions to protect customer as well as company
9 interests.

10 S&S is responsible for Back-Office financial and accounting activities required to
11 reconcile all energy contracts for E&FP's power procurement, verify CAISO charges and
12 support the primary operational systems (PCI, Allegro and Versify)¹⁰ used in E&FP's operations.
13 In the reconciliation process, S&S validates that all contract and market payments and receipts
14 are in accordance with the terms of the contract or tariff provisions associated with the
15 underlying transactions. This process requires annually verifying and processing over 2,100
16 invoices and billing requests, filing disputes of questionable charges when appropriate, and
17 preparing journal entries for recording expenses and revenues. S&S is also responsible for
18 financial accounting and payment of the commodity, transportation, hedging, and other related
19 transactions associated with the gas burned at the five SDG&E-owned power plants with E&FP
20 tolling agreements.¹¹

21 In addition, S&S must review daily CAISO charges and invoices for accuracy and will
22 enter into disputes with the CAISO as required to correct billing discrepancies. S&S provides
23 guidance and expertise in technical analyses for Market Operations and Origination and Portfolio
24 Design using the CAISO meter data, and tariff and power contract data to support regulatory and
25 legislative policy positions. To support the development of procurement policies and targets,
26 S&S responds to data requests from multiple regulatory agencies, including the CPUC and
27 FERC relating to procurement trends.

¹⁰ These systems are primarily used to schedule and bid power to the CAISO, record gas and power transactions, and manage RA.

¹¹ Miramar Energy Facility I, Miramar Energy Facility II, Palomar Energy Center, Cuyamaca Peak Energy Center and Desert Star Energy Center are further described in Daniel Baerman's Electric Generation & SONGS testimony (Exhibit SDG&E-16).

1 Other S&S responsibilities include the aggregation, tracking, and reporting of energy
2 procurement data, including meter data to regulatory agencies and the CAISO, reviewing,
3 testing, and commenting on proposed CAISO changes to the reconciliation process, and
4 preparing FERC Form 1 sections related to purchased power and sales for resale.¹² S&S is
5 responsible for the energy supply costs for the ERRR compliance and General Rate Case
6 proceedings and providing corresponding testimony and responses to data requests from
7 regulatory agencies, including the Office of Ratepayer Advocates (ORA) and the CPUC Energy
8 Division.

9 S&S contract administrators are responsible for the 67 operating PPAs within E&FP's
10 portfolio.¹³ Contract administration activities include daily interactions with counterparties,
11 coordinating and resolving disputes, monitoring counterparties safety plans, invoice
12 verifications, contract interpretations and serving as points of contact. Contract administrators
13 work to manage proper distribution of settlement payments and charges and, when discrepancies
14 are found, the two functions work together to resolve them. Contract administrators also monitor
15 and verify various contract terms, including scheduled maintenance, curtailments, insurance and
16 efficiency monitoring. Through 2016, contract administrators, in conjunction with other E&FP
17 teams had already secured an estimated \$6.5 million in customer savings from implementation of
18 economic curtailment amendments to renewable contracts and expects these savings to grow
19 over time. Within E&FP, contract administrators also develop and maintain functional and
20 process flow diagrams for energy procurement, support process improvement initiatives, and
21 develop and document business requirements and processes for quality control.

22 S&S is further responsible for administration of vendor contracts associated with
23 software subscriptions and key software systems, including PCI, Allegro, and Versify, which
24 E&FP uses to record gas and power transactions, manage RA and to schedule and bid power to
25 the CAISO. S&S works closely with internal Information Technology personnel and external
26 contractors to manage the implementation of system upgrades and enhancements providing
27 overall leadership, strategic planning, guidance, and management to meet objectives, milestones,
28 and budgets associated with capital projects and system changes to support E&FP department
29 functions.

¹² CAISO changes may require E&FP to intervene at FERC as well.

¹³ Figure excludes projects in construction and reflects data as of December 31, 2016.

1 Together, the Middle-Office and Back-Office functions within E&FP mitigates risks to
2 SDG&E's customers so that customers incur correct costs and receive correct revenues from the
3 bidding, purchase, and sale of energy and ancillary services into the CAISO markets. The
4 prudent provision of these functions protects the clean, safe and reliable energy portfolio E&FP
5 uses to meet company goals, state mandates, and customer interests.

6 **2. Forecast Method**

7 The forecast method developed for this cost category is a five-year historical average.
8 This is most appropriate because the five-year average is indicative of how we expect Middle-
9 Office and Back-Office functions to operate going forward. The five-year average reflects a
10 small decrease in labor costs that accords with streamlining efforts. Non-labor costs have varied
11 in recent years from over \$1.2 million in 2014 to approximately \$850,000 in 2016. Because
12 S&S may change from year to year on how it manages software subscriptions and leverages
13 technology systems and new offerings to support E&FP operations, reporting, and compliance, a
14 five-year average reduces the associated variability. Using this approach, the TY 2019 forecast
15 for Middle and Back Office includes labor costs of \$2,429,000 and non-labor costs of \$1,060,000
16 with 24.6 FTEs.

17 **3. Cost Drivers**

18 Energy Risk identifies, manages, monitors, and reports on market, credit, financial and
19 operational risks associated with a hedging portfolio of over \$1 billion,¹⁴ and assesses credit and
20 market risks associated with existing and future long-term and short-term transactions. Due to
21 the technical nature of the tasks, Energy Risk requires highly educated and specially trained staff
22 and sophisticated systems to conduct quantitative analysis. Similar to other departments within
23 E&FP, Energy Risk has already leveraged existing resources to tackle additional modeling and
24 risks associated with new technologies and new market products. The functions performed by
25 Energy Risk are critical to protect the interests of the company and its customers.

26 S&S annually validates and processes over \$1.3 billion in annual transactions related to
27 electricity procurement. The S&S function process requires the collection, validation, and
28 analysis of large amounts of price, quantity and operational data. Given the large amount of data
29 involved and the complexity of the underlying transactions, S&S relies on experienced staff,

¹⁴ SDG&E's hedging portfolio is composed of fixed price power contracts and financial natural gas hedges.

1 advanced computer systems and vendor software solutions to accurately complete the overall
2 settlement process.

3 Similar to ES&D, S&S has already leveraged existing labor and non-labor resources to
4 absorb the increased settlement activities associated with the two new conventional resources
5 added in 2012 and the approximately 32 renewable generation resources that have come on line
6 since 2012. Looking ahead, S&S will need to manage settlement activities associated with
7 additional resources, including new energy storage projects, as well as numerous additional
8 economic curtailment amendments and must ensure it continues to have the capacity to perform
9 its functions successfully.

10 **III. SUPPORT FOR IT CAPITAL COSTS**

11 **A. Introduction**

12 To support E&FP activities, SDG&E is seeking capital costs for certain technology
13 upgrades required to maintain its obligation¹⁵ to provide scheduling services within the CAISO
14 market. The associated capital costs are requested in the Direct Testimony of Mr. Olmsted (Ex.
15 SDG&E-24). A description of the needed upgrades is provided below.

16 **B. 2016 CAISO Mandates**

17 These forecasted capital expenditures support the company's goals of remaining a
18 CAISO Scheduling Coordinator (SC), complying with CAISO mandated changes, achieving
19 operational efficiencies, and ensuring that current software capital assets are kept under
20 maintenance levels and fully supported. The CAISO publishes a roadmap of planned initiatives
21 which are implemented and released twice a year, with which SDG&E must comply to remain a
22 SC.¹⁶ The 2016 initiatives will require new software modules and configuration changes in
23 several major software applications utilized to meet these requirements, including: PCI, which is
24 an E&FP system for communication with the CAISO for bidding and scheduling; and Versify,
25 which is an E&FP RA planning, operations, and analytics system. Noncompliance with these
26 required updates would cause SDG&E to lose its ability to be an SC and could also result in

¹⁵ The majority of SDG&E's contracts require SDG&E to provide scheduling services for the generator counterparties.

¹⁶ Scope of 2016 CAISO initiatives: Capacity Procurement Mechanism Replacement; Commitment Cost Enhancements; Post Implementation Open Metering System (OMS) Enhancements; Flexible Ramping Product; Contingency Modeling Enhancements; and Participating Intermittent Resource Program (PIRP) Decommissioning.

1 potential fines and disallowances in ERRA proceedings. It is imperative that E&FP comply with
2 CAISO requirements by making the necessary updates to its PCI, Allegro, and Versify systems.

3 **C. Allegro Technology Upgrade**

4 These forecasted capital expenditures support the company's goals of complying with
5 SOX requirements, maintaining up-to-date systems, enhancing forecast accuracy, and ensuring
6 compatibility between software systems used within E&FP. Allegro is a SOX compliance
7 system primarily used for regulatory reporting,¹⁷ accounting, commodity trading management,
8 and portfolio valuation. It has been used for the Energy Trading Risk Management (ETRM)
9 functions within E&FP since 2007.

10 In 2014 Allegro Development Corp. began implementing a major product technology
11 revamp, called "Allegro Horizon Technology," to incorporate current technology trends. This
12 new platform builds on and supports ETRM features that impact the data models, business
13 processes and functions, and extensions SDG&E has built up over time to support E&FP's
14 unique applications and reporting requirements. It also addresses some long-standing
15 enhancement requests and resolves issues identified by the E&FP and IT teams. The new system
16 will not only improve forecasting and compliance capabilities, but will create efficiencies and
17 allow labor to be re-directed to other tasks.¹⁸ The benefits of these new capabilities cannot be
18 realized without an upgrade to the "Allegro Horizon Technology" version, as Allegro no longer
19 supports functional changes or enhancements to existing software currently used by SDG&E.
20 Allegro performs a critical function at SDG&E by allowing E&FP accounting to interface
21 directly with SAP, and it is crucial that E&FP implement the new Allegro version to maintain
22 efficiencies and to comply with regulatory and market changes.

23 **D. 2017 CAISO Mandates**

24 These forecasted capital expenditures support the company's goals of enhancing accuracy
25 to reduce time spent on manual processes, to reduce the risk of fines, to comply with company
26 information and technology (IT) standards, and to streamline the validation and updating of
27 electric rate characteristics for Transitional Bundled Service pricing. The CAISO has updated its

¹⁷ The Federal Energy Regulatory Commission, CPUC, Commodity Futures Trading Commission, and Securities & Exchange Commission all receive reports that include data from Allegro.

¹⁸ For example, calculating gas losses will allow \$10,000 of unloaded labor costs per year to be reallocated, and the new regulatory reporting capability will allow \$12,000 of unloaded labor costs per year (unloaded) to be reallocated.

1 Operation Meter Analysis & Reporting (OMAR) system, which necessitates a replacement of
2 E&FP's current Electricity Scheduling & Settlement Application (ESSA) product, as it not
3 compatible with the proposed CAISO changes and is no longer supported by SDG&E
4 Information Technology operations personnel. The new Meter Data Processing System (MDPS)
5 will automate current manual operations, compile and submit settlement-quality meter data to the
6 CAISO's new Meter Reporting Interface – Settlement (MRI-S), and provide an opportunity to
7 utilize CAISO actual data for department analytics and reporting to support efficiency and
8 accuracy in E&FP's operations. Without the implementation of MDPS, SDG&E will not be able
9 to meet its meter data reporting requirements as per CAISO Tariff Section 37.5.2.¹⁹

10 **E. 2018 CAISO Mandates**

11 These forecasted capital expenditures support company goals similar to those described
12 above under 2016 CAISO Mandates – remaining a CAISO SC, complying with CAISO
13 mandated changes and CPUC requirements, achieving market and operational efficiencies, and
14 ensuring that current software capital assets are kept under maintenance levels and fully
15 supported. Compliance with the 2018 CAISO Mandates will require further new and updated
16 software components and configuration changes to PCI, Versify, and the Automated Dispatch
17 System. Projects to comply with the 2018 CAISO initiatives require meeting the CAISO
18 published schedule timeline and the use of IT Project Management Office, Vendor, and E&FP
19 resources. The CAISO implementation methodology utilizes a project based approach, and
20 E&FP must plan for market simulation testing several months in advance of the completion date
21 to ensure readiness and account for delays caused by meeting the dependencies from all CAISO
22 stakeholders and decision makers. As explained above, it is imperative that E&FP comply with
23 CAISO requirements by making the necessary updates to its PCI, Allegro, and Versify systems.

24 **IV. CONCLUSION**

25 The E&FP functions that SDG&E will continue to undertake in 2019, as the above
26 testimony demonstrates, exist to ensure clean, safe, and reliable energy is available to serve
27 SDG&E's customers. Associated O&M responsibilities require expertise and advanced
28 technology systems, that are broadly consistent with prior year costs. As such, SDG&E requests
29 that the Commission adopt its proposal for \$8.7 million of O&M expenses in TY 2019 for E&FP

¹⁹ Scheduling Coordinator Metered Entities must provide CAISO with complete and accurate Meter Data, subject to penalties and sanctions.

1 in order to allow SDG&E to meet all of its electric commodity procurement responsibilities
2 through the 2019-2021 rate case cycle.

3 This concludes my prepared direct testimony.

1 **V. WITNESS QUALIFICATIONS**

2 My name is Kendall K. Helm, and since June 2016 I have been the Director of
3 Origination and Portfolio Optimization in the Energy Procurement department at San Diego Gas
4 & Electric. My business address is 8315 Century Park Court, San Diego, California 92123.

5 In my current job, I oversee the procurement of all long-term energy resources. My
6 responsibilities include overseeing the procurement process and managing the review of bids
7 received within solicitations, including the Track IV Decision, Demand Response Auction
8 Mechanism, Resource Adequacy, Renewable Auction Mechanism and Green Tariff Shared
9 Renewables.

10 I have been with the Sempra Energy family of companies since 2012. Prior to taking my
11 current position at SDG&E, I was the Director of Investor Relations at Sempra Energy. I have
12 also worked as Manager of Corporate Economics for Sempra Energy, where I provided research
13 on the company's valuation, capital structure and corporate strategy. Prior to joining the Sempra
14 Energy companies, I was Senior Economist for International Affairs and Trade at the U.S.
15 Government Accountability Office, where I reported to Congress on topics relating to climate
16 change, energy export promotion, and international competitiveness.

17 I received a bachelor's degree in economics and international studies from the University
18 of Denver and a Ph.D. in economics from American University.

19 I have not previously testified before the California Public Utilities Commission.

ATTACHMENT 1

CONFIDENTIAL

Status as of:
December 31, 2024

Commercial Operations		TOTAL PPA'S	
Contract Summary	Number	MW	MWH
QF/CHP	4	55.0	14,457
Renewable	39	2,412.3	6,244,501
Tolling	5	1,054.4	315,398
Energy Storage	6	381.0	119,674
WSP/PEI	13	24.0	(3,577,074)
Total	67	3,926.7	3,116,956

Commercial Operations		TOTAL PPA'S	
Technology Type	Number	MW	MWH
Bio-Mass	1	24.0	197,901.3
Conduit-Hydro	4	2.9	5,108.0
Energy Storage - Pumped Hydro	0	0.0	0.0
Energy Storage - Battery	6	381.0	119,673.7
Hybrid - Energy Storage + Solar PV	1	10.0	39,786.4
Landfill Gas	3	7.5	60,735.9
Market	13	24.0	(3,577,074.0)
Natural Gas	7	1,108.4	329,814.0
Solar PV	23	1,346.1	3,287,689.7
Wind	9	1,022.8	2,653,321.4
Total	67	3,926.7	3,116,956

Pre-Operational		TOTAL PPA'S	
Contract Summary	Number	MW	MWH
QF/CHP	1	17.4	0
Renewable	2	163.5	0
Tolling	0	0.0	0
Energy Storage	2	173.5	0
WSP/PEI	0	0.0	0
Total	5	354.4	0

Pre-Operational		TOTAL PPA'S	
Technology Type	Number	MW	MWH
Bio-Mass	0	0.0	0
Conduit-Hydro	0	0.0	0
Energy Storage - Pumped Hydro	0	0.0	0
Energy Storage - Battery	1	60.0	0
Hybrid - Energy Storage + Solar PV	4	294.4	0
Landfill Gas	0	0.0	0
Market	0	0.0	0
Natural Gas	0	0.0	0
Solar PV	0	0.0	0
Wind	0	0.0	0
Total	5	354.4	0

Expired/Terminated		TOTAL PPA'S	
Contract Summary	Number	MW	MWH
QF/CHP	2	80.0	3,246.5
Renewable	3	109.3	228,917.1
Tolling	1	40.0	864.4
Energy Storage	0	0.0	0.0
WSP/PEI	10	0.0	(1,249,383.0)
Total	16	229.3	(1,016,355)

Expired/Terminated		TOTAL PPA'S	
Technology Type	Number	MW	MWH
Bio-Mass	0	0.0	0.0
Conduit-Hydro	0	0.0	0.0
Energy Storage - Pumped Hydro	1	40.0	864.4
Energy Storage - Battery	0	0.0	0.0
Hybrid - Energy Storage + Solar PV	0	0.0	0.0
Landfill Gas	1	2.3	3,894.4
Market	10	0.0	(1,249,383.0)
Natural Gas	2	80.0	3,246.5
Solar PV	0	0.0	0.0
Wind	2	107.0	225,022.8
Total	16	229.3	(1,016,355)

CONTRACT TERMS										NEW CONTRACTS										AMENDMENTS & MODIFICATIONS FOR REVISIONS & DISAPPROVALS										TERMINATED CONTRACTS									
Contract No.	Contract Description	Contract Type	Contract Value	Contract Start Date	Contract End Date	Contract Status	Contract Owner	Contract Manager	Contract Location	Contract No.	Contract Description	Contract Type	Contract Value	Contract Start Date	Contract End Date	Contract Status	Contract Owner	Contract Manager	Contract Location	Contract No.	Contract Description	Contract Type	Contract Value	Contract Start Date	Contract End Date	Contract Status	Contract Owner	Contract Manager	Contract Location	Contract No.	Contract Description	Contract Type	Contract Value	Contract Start Date	Contract End Date	Contract Status	Contract Owner	Contract Manager	Contract Location
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From 2023 AS Testimony

From 2024 AS Testimony

From our att 1 electric tab

Resource	Contract MW	Dispatch Profile	Auxiliary Service Capability
QF contracts (Natural Gas)	31.6	Dispatched As Available	None
QF Renewable	2	Intermittent As Available	None
Renewable non-intermittent resources	59.85	Baseload (as available)	None
Renewable Intermittent Resources	2183.7 (maximum)	Intermittent	None

Resource	Contract M/M	Dispatch Profile	Auxiliary Service Capability
Q1: contracts (non-hazardous)	29-50	Dispatched As Available	None
Q2: Renewable	35	Dispatched As Available	None
Renewable non-hazardous (EPA 40 CFR 302.41)	81.71	Dispatched (as available)	None
Renewable intermediate resources	2195.31	Dispatched	None

Row Labels	Sum of Contrasts
Q1 Baseload	29.10
Q1 Renewable Intermittent	0.90
Renewable Intermittent	2,185.31
Renewable Non-Intermittent Baseload	33.77
Grand Total	2,349.08

Q4 & CIP PLANTS THAT SOLD POWER OR WERE DISPATCHED BY D-GAS					
Plant	PPA Type	PPA Name MW	PPA Name Capacity MW	Dispatch Price	Capacity Price
GP-Parkville	PPA	5.4	0	\$0.00	\$0.00
GP-Idaho	PPA	15	0	\$0.00	\$0.00
Greystone	PPA	48.9	49.0	\$0.21 \$/MWh, variable CRM	\$10.00 /yr + \$11.40 - \$13.60 /yr
Mountain	PPA	5.1	0	\$0.00	\$0.00
Truckee	PPA	15	0	\$0.24 \$/MWh, variable CRM	\$10.00 /yr with 10.00 \$/MWh
Yuba	PPA	136.6	136.6	\$0.00	\$0.00

Total QF Supply (MWh)	SDG&E's Total Energy Supply (total sales MWh)	% of QF generation relative to SDG&E's total energy supply
1,664	3,568,704	0.05%

164	3.283035	0.005%

Month	KRM:		SPEC	TOTAL
	ISL	RATE SUBMARRY		
	Total On System Scale Entry Date	PAGE		
Jan-24	270,263,953	(0.50%)		367,842,016
Feb-24	306,374,352	(0.51%)		306,098,015
Mar-24	270,263,981	(0.50%)		270,268,637
Apr-24	292,266,406	(0.52%)		292,266,294
May-24	268,219,240	(0.26%)		268,268,687
Jun-24	191,504,277	(7.05%)		191,887,219
Jul-24	228,263,181	(0.51%)		228,267,368
Aug-24	298,269,879	(0.50%)		298,265,687
Sep-24	298,322,715	(0.50%)		298,328,816
Oct-24	270,263,982	(0.50%)		270,277,958
Nov-24	228,268,381	(0.50%)		228,274,669
Dec-24	253,680,058	(0.50%)		253,453,370
TOTAL	3,267,206,054	(0.50%)		3,267,145,722

Not Specified (Programme (MVA)) 2,283,935

[illegible]

Contains confidential/privileged pursuant to applicable provisions of D.06-06-066, D.08-04-023, G.O. 66-C and PUC Code Sec. 583 and Sec. 454.5(g)

OPERATIONAL - LONG-TERM RESOURCE ADEQUACY (1 YEAR OR MORE)

Project Names	Technology	Product	Contract MW	Execution Date	Year Executed	Delivery Period (Years)	CPUC Authorization	Capacity Price	Contract Status @ year end	CASO Resource ID	Cost Recovery Mechanism	Notes
Clean Energy Alliance (Set)	Natural Gas + Lithium-Ion Energy Storage	Resource Adequacy	7	09/28/2022	2022		Advice Letter 4085-E		Active	SENTNL_2_CTO 1 through SENTNL_2_CTO 8 VSTAES_6_VESBT1 VLNCTR_6_VCEBT1	MCAM	
Edwards-Sanborn (2)	Energy Storage + Solar PV	Resource Adequacy	25	05/12/2022	2022		Advice Letter 4010-E		Active	EDWARD_2_E215B1 SANBRN_2_E818T3 EDWARD_2_E828T3 SANBRN_2_E828B3 EDWARD_2_E238B1	MCAM	
Edwards-Sanborn (3)	Energy Storage + Solar PV	Resource Adequacy	20	10/25/2022	2022		Advice Letter 4096-E; Reduction E-S241		Active	EDWARD_2_E215B1 SANBRN_2_E818T3 EDWARD_2_E828T3 SANBRN_2_E828B3 EDWARD_2_E238B1	PCIA/ PABA (Vintage 2021)	
Gateway	Energy Storage	Resource Adequacy	10	05/25/2022	2022		Advice Letter 4010-E		Active	GATEWAY_2_GE8BT1	MCAM	
Ortega Grid LLC	Battery: Lithium-Ion	Resource Adequacy	RA 10 MW	12/04/2020	2020		Reduction E-5139 with Tier 3 Advice Letter 4026-E		Executed	VALLEY_8_ORTBT1	MCAM	
San Diego Community Power	Natural Gas + Lithium-Ion Energy Storage	Resource Adequacy	80	07/08/2022	2022		Advice Letter 4036-E		Active	SENTNL_2_CTO 1 through SENTNL_2_CTO 8 VSTAES_6_VESBT1 VLNCTR_6_VCEBT1	MCAM	
Sentinel Energy Center, LLC	Natural Gas	Resource Adequacy	RA 47 MW	02/12/2021	2021	Jun 2021 - Dec 2026	ADVICE LETTER 3889-E	\$/MWh Y1 - 263.04 Y2 - 254.78 Y3 - 254.08 Y4 - 254.78	Active	SENTNL_2_CTO1 - SENTNL_2_CTO8	20 MW is MCAM & 27 MW is LGBCAM	
Valley Center Storage I, LLC	Battery: Lithium-Ion	Resource Adequacy	RA 50 MW	08/31/2020	2020	Dec 2021 - Dec 2036	Reduction E-5117	\$/MWh Y1 - 0.20328 Y2 - 0.20830 Y3 - 0.20838 Y4 - 0.21283	Active	VLNCTR_6_VCEBT1	MCAM	
Vista Energy Storage, LLC	Lithium-Ion Battery Storage	Resource Adequacy	10MW	08/31/2020	2020	Aug 2021 - July 2036	Reduction E-5117	\$/MWh Y1 - 0.22279 Y2 - 0.22443 Y3 - 0.22837 Y4 - 0.22772	Active	VSTAES_6_VESBT1	MCAM	
EXPIRED OR TERMINATED PROJECTS												
East Bay Community Energy Authority	Natural Gas	Resource Adequacy	Varies	10/28/2021	2021	Feb 2022 to Dec 2024	Part of multiyear RA solicitation; did not require separate filing for Commission approval		Expired?	MIRCHNT_2_PL1X3	PABA (GL5550281)	
Chay Mesa Energy Center	Natural Gas	Resource Adequacy	RAR/Land 603.6 MW; Flex RAR (Cat1) 448.6 MW	10/24/2018	2018	Oct 2019 - Aug 2024	CPUC Reduction E-488		Expired	OTMESA_2_PL1X3	PABA	
Sonoma Clean Power Authority	Biomass	Resource Adequacy	RA 24 MW	10/07/2019	2019	Jan 2020 - Sep 2024	Reduction E-5185		Expired?	LASEN_6_UNITS	TMSQBA	

March

CONTRACTS FOR THE PROCUREMENT OF FUEL SERVICES IN EFFECT OR UNDER NEGOTIATION, INITIATION, REVISION,
AMENDMENT, OR TERMINATION

Contract type	Description	Trade Book	Contract class	Product	Status	Eff date	Contract type	Description	Trade Book	Contract class	Product	Status	Eff date
BILATERAL	Andarko	UEG	NAESB	NG	ACTIVE	09/01/2003	BILATERAL	KentMcGee Energy Services	UEG	NAESB	NG	ACTIVE	02/20/2006
BILATERAL	Anadarko	UEG	NAESB	NG	ACTIVE	02/11/2014	BILATERAL	Lucid Energy Delaware	UEG	NAESB	NG	ACTIVE	08/21/2023
BILATERAL	Arizona Public Service	UEG	GISB	NG	ACTIVE	03/22/1999	BILATERAL	Macquarie Energy LLC	UEG	ISDA	NG	ACTIVE	06/10/1999
BILATERAL	ARM Energy Mgmt	UEG	NAESB	NG	ACTIVE	09/04/2019	BILATERAL	Macquarie Energy LLC	UEG	NAESB	NG	ACTIVE	02/01/2003
BILATERAL	ATO Power	UEG	NAESB	NG	ACTIVE	02/26/2013	BILATERAL	Mercutia Energy America	UEG	NAESB	NG	ACTIVE	12/07/2018
BILATERAL	Bank of Montreal	UEG	ISDA	NG	ACTIVE	07/22/2003	BILATERAL	Meritspan Energy California LLC	UEG	NAESB	NG	ACTIVE	04/23/2015
BILATERAL	Barclays Bank	UEG	ISDA	NG	ACTIVE	10/13/2005	BILATERAL	Merrill Lynch Commodities	UEG	ISDA	NG	ACTIVE	10/01/2003
BILATERAL	BioUrja Trading	UEG	NAESB	NG	ACTIVE	10/01/2015	BILATERAL	Mleco	UEG	NAESB	NG	ACTIVE	07/16/2013
BILATERAL	BNP Paribas Energy Trading GP	UEG	ISDA	NG	ACTIVE	10/01/2004	BILATERAL	Morgan Stanley Capital Group	UEG	Other	NG	ACTIVE	11/20/1995
BILATERAL	BP Corporation North America	UEG	ISDA	NG	ACTIVE	04/01/2005	BILATERAL	National Fuel Marketing Company	UEG	NAESB	NG	ACTIVE	08/01/2002
BILATERAL	BP Energy	UEG	Other	NG	ACTIVE	06/08/2006	BILATERAL	Natural Gas Exchange	UEG	Broker	NG	ACTIVE	11/11/2009
BILATERAL	BP Energy	UEG	NAESB	NG	ACTIVE	06/01/2003	BILATERAL	NDR Energy Group	UEG	NAESB	NG	ACTIVE	03/19/2015
BILATERAL	Calpine Energy Services	UEG	NAESB	NG	ACTIVE	07/01/2019	BILATERAL	Nevada Power Company	UEG	NAESB	NG	ACTIVE	08/01/2015
BILATERAL	Calpine Energy Solutions	UEG	NAESB	NG	ACTIVE	08/27/2012	BILATERAL	NextEra Energy	UEG	NAESB	NG	ACTIVE	07/01/2006
BILATERAL	Canadian Imp Bank of Commerce	UEG	ISDA	NG	ACTIVE	04/01/1997	BILATERAL	NJR Energy Services	UEG	NAESB	NG	ACTIVE	10/01/2009
BILATERAL	Cargill	UEG	NAESB	NG	ACTIVE	02/01/2003	BILATERAL	Noble Americas Energy Solutions	UEG	NAESB	NG	ACTIVE	08/27/2012
BILATERAL	Castleton	UEG	NAESB	NG	ACTIVE	11/01/2004	BILATERAL	NRG Business Marketing	UEG	NAESB	NG	ACTIVE	01/01/2023
BILATERAL	Chevron Natural Gas	UEG	NAESB	NG	ACTIVE	01/01/2003	BILATERAL	Occidental	UEG	NAESB	NG	ACTIVE	05/01/2005
BILATERAL	CIMA Energy	UEG	NAESB	NG	ACTIVE	07/01/2006	BILATERAL	One Nation Energy Solutions	UEG	NAESB	NG	ACTIVE	02/01/2003
BILATERAL	Cladell Energy Marketing LLC	UEG	NAESB	NG	ACTIVE	11/14/2016	BILATERAL	Pacific Gas and Electric	UEG	NAESB	NG	ACTIVE	05/01/2003
BILATERAL	Crisbank	UEG	ISDA	NG	ACTIVE	08/01/2001	BILATERAL	Pacific Summit Energy	UEG	NAESB	NG	ACTIVE	10/11/2005
BILATERAL	Citigroup Energy	UEG	NAESB	NG	ACTIVE	02/27/2007	BILATERAL	Patten Energy Enterprises	UEG	GISB	NG	ACTIVE	04/01/2000
BILATERAL	City of Escondido	UEG	Other	NG	ACTIVE	11/19/2007	BILATERAL	Patten Energy Enterprises	UEG	NAESB	NG	ACTIVE	04/10/2012
BILATERAL	Concord Energy LLC	UEG	NAESB	NG	ACTIVE	08/27/2002	BILATERAL	PetroChina International	UEG	NAESB	NG	ACTIVE	11/02/2015
BILATERAL	Conexus Energy	UEG	NAESB	NG	ACTIVE	06/21/2016	BILATERAL	Powerex Corporation	UEG	NAESB	NG	ACTIVE	12/01/2005
BILATERAL	Conoco Phillips	UEG	NAESB	NG	ACTIVE	12/01/2002	BILATERAL	Red Willow Production Company	UEG	GISB	NG	ACTIVE	04/01/2000
BILATERAL	Constellation Energy Gen	UEG	NAESB	NG	ACTIVE	02/01/2022	BILATERAL	Sacramento Municipal Utility District	UEG	NAESB	NG	ACTIVE	04/01/2007
BILATERAL	Continuum Energy Services	UEG	NAESB	NG	ACTIVE	09/01/2014	BILATERAL	Saja Energy	UEG	NAESB	NG	ACTIVE	08/21/2013
BILATERAL	ORC Marketing	UEG	NAESB	NG	ACTIVE	09/01/2015	BILATERAL	Salt River Project	UEG	NAESB	NG	ACTIVE	10/01/2004
BILATERAL	ORC Marketing	UEG	NAESB	NG	ACTIVE	03/31/2021	BILATERAL	Samson Resources Co	UEG	NAESB	NG	ACTIVE	08/21/2023
BILATERAL	Credit Suisse Energy	UEG	ISDA	NG	ACTIVE	04/01/2008	BILATERAL	Sequent Energy	UEG	NAESB	NG	ACTIVE	09/14/2007
BILATERAL	DCP Midstream Marketing	UEG	NAESB	NG	ACTIVE	09/01/2009	BILATERAL	Shell Energy	UEG	NAESB	NG	ACTIVE	05/01/2009
BILATERAL	DES	UEG	NAESB	NG	ACTIVE	07/15/2011	BILATERAL	Six One	UEG	NAESB	NG	ACTIVE	07/18/2019
BILATERAL	Deutsche Bank AG	UEG	ISDA	NG	ACTIVE	12/01/2005	BILATERAL	SoCal	UEG	Other	NG	ACTIVE	01/01/2010
BILATERAL	Direct Energy	UEG	NAESB	NG	ACTIVE	12/01/2021	BILATERAL	SoCal Gas Co Capacity Products	UEG	NAESB	NG	ACTIVE	06/17/2005
BILATERAL	EDF Trading	UEG	NAESB	NG	ACTIVE	12/12/2008	BILATERAL	Southern California Gas Company	UEG	GISB	NG	ACTIVE	07/01/1998
BILATERAL	Elk Mountain Energy	UEG	NAESB	NG	ACTIVE	08/30/2012	BILATERAL	Southwest Gas	UEG	Transportation	NG	ACTIVE	11/30/2011
BILATERAL	Encarnacion Ventures	UEG	NAESB	NG	ACTIVE	09/13/2018	BILATERAL	Spotlight Energy	UEG	NAESB	NG	ACTIVE	11/03/2021
BILATERAL	Energy Transfer Company	UEG	NAESB	NG	ACTIVE	01/16/2004	BILATERAL	Suez Energy Marketing NA	UEG	NAESB	NG	ACTIVE	12/10/2002
BILATERAL	ENSTOR Energy Services	UEG	NAESB	NG	ACTIVE	02/01/2003	BILATERAL	Sustara Energy	UEG	NAESB	NG	ACTIVE	01/16/2013
BILATERAL	Enterprise Products Operating	UEG	NAESB	NG	ACTIVE	04/24/2009	BILATERAL	Talen Energy Marketing	UEG	NAESB	NG	ACTIVE	02/28/2003
BILATERAL	ETC Marketing	UEG	NAESB	NG	ACTIVE	01/16/2004	BILATERAL	Targa Gas Marketing	UEG	NAESB	NG	ACTIVE	05/01/2009
BILATERAL	Fuel Energy Resources	UEG	NAESB	NG	ACTIVE	12/01/2007	BILATERAL	Tenaska Gas Storage	UEG	NAESB	NG	ACTIVE	01/01/2003
BILATERAL	Exelon Generation Company	UEG	NAESB	NG	ACTIVE	05/02/2005	BILATERAL	Tenaska Marketing Ventures	UEG	NAESB	NG	ACTIVE	01/01/2003
BILATERAL	Freedom Energy	UEG	NAESB	NG	ACTIVE	09/09/2019	BILATERAL	Tiger Natural Gas	UEG	NAESB	NG	ACTIVE	05/23/2008

ERRA Record Period: 2024

CONTRACTS FOR THE PROCUREMENT OF FUEL SERVICES IN EFFECT OR UNDER NEGOTIATION, INITIATION, REVISION, AMENDMENT, OR TERMINATION

BILATERAL	Freepoint	UEG	NAESB	NG	ACTIVE	02/06/2012	BILATERAL	Total Gas and Power North America	UEG	NAESB	NG	ACTIVE	04/01/2004
BILATERAL	GearyEnergy	UEG	NAESB	NG	ACTIVE	05/23/2008	BILATERAL	Tristar Producer Services of TX	UEG	Other	NG	ACTIVE	01/16/1996
BILATERAL	Hartree Partners	UEG	NAESB	NG	ACTIVE	02/17/2023	BILATERAL	Twin Eagle	UEG	NAESB	NG	ACTIVE	12/04/2012
BILATERAL	Iberdrola Energy Services	UEG	NAESB	NG	ACTIVE	02/01/2003	BILATERAL	Twine Gas and Power	UEG	GISB	NG	ACTIVE	07/01/2001
BILATERAL	ICC Energy	UEG	NAESB	NG	ACTIVE	10/01/2006	BILATERAL	UBS AG	UEG	ISDA	NG	ACTIVE	04/01/2008
BILATERAL	IPC	UEG	NAESB	NG	ACTIVE	06/16/2008	BILATERAL	Ultra Resources	UEG	NAESB	NG	ACTIVE	11/01/2004
BILATERAL	J Aron	UEG	ISDA	NG	ACTIVE	04/02/2003	BILATERAL	United Energy Trading	UEG	NAESB	NG	ACTIVE	05/01/2003
BILATERAL	J Aron	UEG	NAESB	NG	ACTIVE	06/01/2003	BILATERAL	Walden Energy	UEG	NAESB	NG	ACTIVE	12/12/2003
BILATERAL	JP Morgan Ventures Energy Corp	UEG	NAESB	NG	ACTIVE	10/14/2008	BILATERAL	Wells Fargo Commodities	UEG	NAESB	NG	ACTIVE	01/01/2007
BILATERAL	JP Morgan Ventures Energy Corp	UEG	ISDA	NG	ACTIVE	12/01/2007	BILATERAL	WPX Energy Marketing	UEG	NAESB	NG	ACTIVE	03/01/2010
BILATERAL	K2 Commodities	UEG	NAESB	NG	ACTIVE	07/28/2017	BILATERAL	XTO Energy	UEG	NAESB	NG	ACTIVE	04/02/2021
TRANSPORT	Kern River	UEG	Transportation	NG	ACTIVE	01/01/1993							

2024 QF MONTHLY
PAYMENTS

Confidential/privileged pursuant to applicable provisions of D.06-06-066, G.O. 66-D and PUC Code Section 583 and Section 454.5(g).

[illegible]

ATTACHMENT 2

CONFIDENTIALITY DECLARATION OF MATT RICHARDSON

**BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA**

**DECLARATION
OF MATT RICHARDSON**

A.25-06-XXX

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least Cost Dispatch and Power Procurement Activities in 2024, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account and Transition Cost Balancing Account in 2024 and (iii) Costs Recorded in Related Regulatory Accounts in 2024

I, Matt Richardson, declare as follows:

1. I am an Electric & Fuel Procurement Senior Energy Administrator for San Diego Gas & Electric Company (“SDG&E”). I have included my Direct Testimony (“Testimony”) in support of SDG&E’s Application for Approval of: (i) Contract Administration, and (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Incurred During the Record Period January 1, 2024 through December 31, 2024, and (iii) the Entries Recorded in Related Regulatory Accounts. Additionally, I am thoroughly familiar with the facts and representations in this declaration and if called upon to testify I could and would testify to the following based upon personal knowledge.

2. I am providing this Declaration to demonstrate that the confidential information (“Protected Information”) in support of the referenced Application falls within the scope of data provided confidential treatment in the IOU Matrix (“Matrix”) attached to the Commission’s Decision D.06-06-066 (the Phase I Confidentiality decision). Pursuant to the procedures adopted in D.08-04-023, I am addressing each of the following five features of Ordering Paragraph 2 in D.06-06-066:

- that the material constitutes data listed in the Matrix;
- the category or categories in the Matrix the data correspond to;
- that SDG&E is complying with the limitations on confidentiality specified in the Matrix for that type of data;
- that the information is not already public; and
- that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

3. The confidential information contained in my Testimony constitutes material, market sensitive, electric procurement-related information that is within the scope of Section 454.5(g) of the Public Utilities Code.¹ As such, the Protected Information provided by SDG&E is allowed confidential treatment in accordance with Appendix 1 – IOU Matrix in D.06-06-066.

Confidential Information	Matrix Reference	Reason for Confidentiality and Timing
The highlighted areas in Section IV.H.1. entitled “Payments to QF/CHP” • Table entitled “2024 QF MONTHLY PAYMENTS”	XI	Detail of monthly variable cost on energy and utility operation, confidential for 3 years.
All highlighted areas in the body, tables or footnotes of Section VI.A entitled “Renewable Resources (Non QF/CHP)” sections: 3. Solar 5. Hybrid – Energy Storage/Solar PV	VII.G	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.B.2 entitled “Battery Energy Storage Systems (BESS)”	VII.B VII.E	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.F entitled “Bundled Energy & REC Sales”	VII.B	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.G entitled “Pre-Commercial Contracts” 1. Energy Storage 2. Hybrid (Solar/Battery) 3. QF	VII.B VII.E VII.G	Contract terms; confidential for 3 years

¹ In addition to the details addressed herein, SDG&E believes that the information being furnished in my Testimony is governed by Public Utilities Code Section 583 and General Order 66-C. Accordingly, SDG&E seeks confidential treatment of such data under those provisions, as applicable.

All highlighted areas in ATTACHMENT 1	VII.B VII.E VII.G XI	Contract terms; confidential for 3 years Detail of monthly variable cost on energy operation; confidential for 3 years

4. I am not aware of any instances where the Protected Information has been disclosed to the public. To my knowledge, no party, including SDG&E, has publicly revealed any of the Protected Information.

5. I will comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

6. The Protected Information cannot be provided in a form that is aggregated, partially redacted, or summarized and continue to provide the level of support to the Application as intended; however, SDG&E is certainly willing to work with the Commission regarding possible aggregations if the Commission seeks to make any of the confidential information provided in the Testimony public.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this June 2, 2025, at San Diego, California.

Matt Richardson

Matt Richardson
Electric & Fuel Procurement Senior
Energy Administrator
San Diego Gas & Electric Company

List of Acronyms

SDG&E	San Diego Gas & Electric Company
CPUC	California Public Utilities Commission
O&M	Operations and Maintenance
E&EP	Electric and Fuel Procurement
CAISO	California Independent System Operator
TY	Test Year
ERRA	Energy Resource Recovery Account
GRC	General Rate Case
VREP	Voluntary Retirement Enhancement Program
O&PD	Origination and Portfolio Design
PPA	Power Purchase Agreements
MW	Megawatts
LTPP	Long-Term Procurement Plan
RPS	Renewable Portfolio Standard
RFO	Request for Offers
D.	Decision
PRG	Procurement Review Group
FTE	Full-Time Equivalent
ES&D	Energy Supply & Dispatch
PCI	Power Costs System Inc.
GHG	Greenhouse Gas
FERC	Federal Energy Regulatory Commission
RA	Resource Adequacy
S&S	Settlements and Systems
SOX	Sarbanes-Oxley
SONGS	San Onofre Nuclear Generating Station
ORA	Office of Ratepayer Advocates
SC	Scheduling Coordinator
OMS	Open Metering System
PIRP	Participating Intermittent Resource Program
ETRM	Energy Trading Risk Management
IT	Information Technology
OMAR	Operation Meter Analysis & Reporting
ESSA	Electricity Scheduling & Settlement Application
MDPS	Meter Data Processing System
MRI-S	Meter Reporting Interface – Settlement

ACRONYM GLOSSARY

AB	Assembly Bill
AL	Advice Letter
Allegro	Allegro Development Corporation
AZ	Arizona
BESS	Battery Energy Storage System
Bio-Mat	Bioenergy Market Adjusting Tariff
Buyer	Used interchangeably with SDG&E
CA	California
CAISO	California Independent System Operator
Cal PAO	California Public Advocates Office
CAM	Cost Allocation Mechanism
CEC	California Energy Commission
CECL	Carlsbad Energy Center, LLC
CHP	Combined Heat & Power
COD	Commercial Operation Date
Commission	California Public Utilities Commission
Consent	Consented to a change of control
CPIA	Consumer Price Index adjustment
CRE	Customer Renewable Energy
CRR	Congestion Revenue Rights
CSE1	Centinela Solar Energy 1
CSE2	Centinela Solar Energy 2
CTC	Competitive Transition Charge
DRAM	Demand Response Auction Mechanism
E&FP	Electric & Fuel Procurement Department
ECEC	El Cajon Energy Center
EEC	Escondido Energy Center
ERM	Energy Risk Management
ERRA	Energy Resource Recovery Account
ES	Energy Storage
ES&D	Energy Supply & Dispatch
ESJ	Energía Sierra Juárez
FERC	Federal Energy Regulatory Commission
FIT	Feed-In-Tariff
GCOD	Guaranteed Substantial Completion Date
GHG	Greenhouse Gas
GMC	Grid Management Charges
G.O.	General Order
GRC	General Rate Case
GTSR	Green Tariff Shared Renewables
HLP	Honey Lake Power Company
ISTs	Inter-SC trades
kW	Kilowatt

kWh	kilowatt hour
LGBA	Local Generation Balancing Account
MCAMBA	Modified Cost Allocation Mechanism Balancing Account
Miramar	MM San Diego
MW	Megawatt
MDPS	Meter Data Processing System
MWh	Megawatt hour
Midway	Midway Solar Farm III (97WI 8ME LLC)
O&M	Operation & Maintenance
OES&D	Origination, Energy Supply & Dispatch
OMEC	Otay Mesa Energy Center
OGE	Orange Grove Energy
Pub. Util. Code	California Public Utilities Code
PABA	Portfolio Allocation Balancing Account
PCI	Power Costs Inc.
PCIA	Power Charge Indifference Adjustment
PDF	Portable Document Format in Adobe Acrobat
PMAX	CAISO test where generator maintains maximum output for 30 minutes.
PPA	Power Purchase Agreement
PPEC	Pio Pico Energy Center
PPTA	Power Purchase Tolling Agreement
PURPA	Public Utility Regulatory Policies Act
QF	Qualifying Facility
Ramona 1	Sol Orchard San Diego 21 Ramona 1
Ramona 2	Sol Orchard San Diego 22 Ramona 2
RA	Resource Adequacy
RAM	Renewable Auction Mechanism
REC	Renewable Energy Credit
ReMat	Renewable Market Adjusting Tariff
Respondents	Marketers and Generators
RFO	Request for Offer
RPS	Renewable Portfolio Standard
RP	Resource Planning
S&S	Settlements and Systems
SC	Scheduling Coordinator
SDCWA	San Diego County Water Authority
SDG&E	San Diego Gas & Electric Company
SGWII	San Geronio Westwinds II
SOX	Sarbanes-Oxley
SRAC	Short Run Avoided Costs
STC 6	Standard Terms and Conditions 6
TCBA	Transition Cost Balancing Account
TMNBCBA	Tree Mortality Non-Bypassable Charge Balancing Account
TOD	Time of Delivery

TY	Test Year
UOG	Utility Owned Generation
USAs	Utility Services Agreements
VAMO	Voluntary Allocation & Market Offer
V Performance	Versify Solutions
Valley Center 1	Sol Orchard San Diego 22 Valley Center 1
Valley Center 2	Sol Orchard San Diego 23 Valley Center 2
WREGIS	Western Renewable Energy Generation Information
WSPP	Western Systems Power Pool
YCA	Yuma Cogen Associates