**RESOURCE ADEQUACY PURCHASE AGREEMENT**

(BUYER DISPATCH OPTION**)**

**between**

**SAN DIEGO GAS & ELECTRIC COMPANY**

**and**

***[SELLER]***

***[Date]***

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**RESOURCE ADEQUACY PURCHASE AGREEMENT**

**(BUYER DISPATCH OPTION)**

**Between**

**SAN DIEGO GAS & ELECTRIC COMPANY**

**And**

**[SELLER]**

This Resource Adequacy Purchase Agreement (Buyer Dispatch Option), together with the Appendices (collectively, the “Agreement”) is made and entered into as of this *[\_\_\_\_]* day of *[Month]*, *[Year]* (“Effective Date”) by **SAN DIEGO GAS & ELECTIC COMPANY**, a California corporation (“SDG&E” or “Buyer”), and *[****SELLER****]*, a *[Seller’s business registration]* (“*[Seller’s Shortname]*” or “Seller”). SDG&E 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:

1. SDG&E is an investor-owned electric utility serving customers in southern California.
2. Seller wishes to sell and deliver exclusively to SDG&E, and SDG&E wishes to purchase, the Product under the conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of these recitals and 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.

# PURCHASE AND SALE of PRODUCT

## Purchase and Sale of Product.

During the Delivery Period, Seller shall deliver and sell, and SDG&E shall receive and purchase, the Resource Adequacy Benefits associated with the Project, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.01. During the Delivery Period, Seller shall not substitute or purchase any Resource Adequacy Benefits from any other generating resource or from the market for delivery hereunder. In addition, Buyer shall, for any Contract Year, have the option of dispatching the Project (the “Demand Reduction”).

1. Resource Adequacy Benefits. During the Delivery Period, Seller grants, pledges, assigns and otherwise commits to SDG&E the full Capacity of the Project in order for SDG&E to meet its RA Compliance Obligations under any Resource Adequacy Rulings. Seller represents, warrants and covenants to SDG&E that Seller (i) has not used, granted, pledged, assigned or otherwise committed, and (ii) will not use, grant, pledge, assign or otherwise commit any Capacity of the Project to meet the RA Compliance Obligations of, or confer Resource Adequacy Benefits upon, any entity other than SDG&E during the Delivery Period, except to the extent such benefits are conferred on another entity pursuant to an order of the CPUC or at the direction of SDG&E. Notwithstanding anything to the contrary in this Agreement, the Parties shall take all actions that may be necessary to effect the use of the Resource Adequacy Benefits of the Project in accordance with the preceding sentence throughout the Delivery Period; *provided, however*, that no such action shall require Seller to modify the Project or to operate the Project in a manner that is inconsistent with the Operating Restrictions. Such actions may include: (i) amending this Agreement and complying with all current and future Tariff provisions and decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties; and (ii) executing all documents or instruments; but excluding, in each case, any action which is inconsistent with any Applicable Law or any permit applicable to the Project.
2. Capacity. During the Delivery Period, SDG&E shall have the exclusive right to the Capacity from the Project.
3. Demand Reduction. [NOTE TO BIDDERS: to be tailored for dispatchable units.]
4. Ancillary Services. [NOTE TO BIDDERS: to be tailored for each bid.]
5. Ownership. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term.
6. Exclusive Rights. [NOTE TO BIDDERS: to be tailored for each bid.]

## The Project.

1. CAISO Test Results. Seller shall provide all CAISO certification test results, including [insert], for the Project within three (3) Business Days of Seller’s receipt for any initial or subsequent test throughout the Term. [NOTE TO BIDDERS: applicable CAISO tests to be discussed. SDG&E also requires certification by an SDG&E approved third party to establish NQC as provided in the Tariff. ]
2. Reserved.
3. *[SDG&E note: insert description of Station Use]*
4. Location of Site. *[Project Address]*, as further described in Appendix 1.02.

## Delivery Points.

1. [Reserved.]
2. Point of Interconnection. The Point of Interconnection is *[insert substation name and location]*, as specified in Appendix 1.03(A).
3. Interconnection Queue Position. *[Number(s) to be inserted]*

# TERM; CONDITIONS PRECEDENT AND DELIVERY PERIOD

## Term.

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

## Approval Date; Termination Related to Failure to Timely Obtain Regulatory Approval.

The “Approval Date” is the date that all the following conditions are satisfied:

1. Final CPUC Approval. Final CPUC Approval shall have been obtained. SDG&E shall seek Final CPUC Approval expeditiously and in good faith. As requested by SDG&E, Seller shall use commercially reasonable efforts to support SDG&E in obtaining Final CPUC Approval. SDG&E has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for Final CPUC Approval with conditions or modifications unacceptable to SDG&E.
2. Delivery of Documents. Seller shall have delivered to SDG&E all documents and information required under this Agreement to be delivered prior to the Approval Date.
3. [NOTE TO BIDDERS; Discuss rate design Condition Precedent and deadline for that to occur.]

Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if Final CPUC Approval has not been obtained or waived by SDG&E in its sole discretion within five hundred thirty (530) days after SDG&E files its request for Final CPUC Approval and a Notice of termination is given on or before the five hundred sixtieth (560th) day after SDG&E files the request for Final CPUC Approval. If SDG&E does not provide such Notice in such time, the Agreement shall be deemed terminated.

If either Party exercises its termination right pursuant to this Section 2.02, no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Development Period Security provided to SDG&E.

## Expected Initial Delivery Date.

Subject to adjustment made under Section 2.05(c), the Expected Initial Delivery Date for the Project is[Date].

## Delivery Period.

The “Delivery Period” shall commence at 12:01 a.m. on the date that the Project achieves its Initial Delivery Date, and shall continue until the earlier of: (i) midnight on the date that is [INSERT DELIVERY PERIOD] years after the Expected Initial Delivery Date, (ii) an Early Termination Date designated in accordance with Section 3.03, or (iii) the date this Agreement is otherwise terminated in accordance with its terms.

The “Initial Delivery Date” shall be the first day of the first full month after all of the following conditions have been satisfied for the Project:

1. Seller has completed, to SDG&E’s satisfaction, Seller’s obligations set forth in Sections 5.01(a) through 5.01(h),inclusive, in order to bring the Project into full operation as contemplated by this Agreement;
2. The Project has achieved Commercial Operation;
3. [NOTE TO BIDDERS: insert required CAISO agreements (i.e., Participating Load Agreement, instead final LIP study and all registrations submitted in a timely manner.]
4. Seller has taken all actions and executed all documents and instruments, required for it, or its agent, to act as its own Scheduling Coordinator under this Agreement;
5. Seller has entered into and complied in all material respects with all obligations under all interconnection agreements required to enable parallel operation of the Project with the PTO’ electric system and CAISO Grid [NOTE TO BIDDERS: INTERCONNECTION REQUIREMENTS TO BE DETERMINED BASED ON RESOURCE]
6. Seller has deposited with SDG&E the applicable Performance Assurance amounts as set forth in Section 13.02(c);
7. Seller has executed and delivered to SDG&E all documents or instruments required under or requested pursuant to Article Thirteen;
8. Seller has provided SDG&E with certification from an independent, non-Affiliate California registered professional mechanical engineer, that (i) Seller has designed and built the Project to have a *[SDG&E Comment: number of years based on technology]* year design life in accordance with Prudent Electrical Practices, and (ii) the design and construction of the Project was carried out by the original equipment manufacturer or other competent organization;
9. Seller has delivered to SDG&E all insurance documents required under Section 30.15;
10. Seller must comply with the requirements as set forth in Rule 32 and the CAISO Tariff for RA Compliance Obligations in an amount equal to the Contract Capacity, as determined by the CAISO, and Seller has delivered to SDG&E a certification or other documentation form the CAISO that evidences that the Project meets SDG&E’s RA Compliance Obligations;
11. Seller has taken all actions and executed all agreements, documents and instruments required for the delivery of Charging Energy Requirements to the Project, *[including the ability to charge the Project with electric energy without restrictions or limitations at any time and at a rate equal to at least the Charging Capacity,]* and is in compliance in all material respects with all obligations under such agreements, documents and instruments;[NOTE TO BIDDER: delete if not a storage resource.]
12. SDG&E shall have obtained or waived Final CPUC Approval; and
13. Seller has obtained Market Based Rate Authority from FERC to sell Product to Buyer under the terms of this Agreement.
14. Seller has obtained a unit NQC and unit EFC for the Project.

The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of that Initial Delivery Date, including without limitation providing Supply Plans in advance of the Initial Delivery Date and Seller delivering an Availability Notice for the Initial Delivery Date, and SDG&E delivering a Dispatch Notice for the Initial Delivery Date. The Parties shall cooperate with each other in order for SDG&E to be able to utilize the Project beginning on the Initial Delivery Date and Seller agrees to cause the Project’s SC to cooperate in order to achieve the same.

1. Notwithstanding any other provision in this Agreement, the Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not occur later than *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]* (the “Initial Delivery Deadline”).

The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of that Initial Delivery Date, including without limitation participation in NQC certification in advance of the Initial Delivery Date and Seller delivering an Availability Notice for the Initial Delivery Date, and SDG&E delivering a Dispatch Notice for the Initial Delivery Date. The Parties shall cooperate with each other in order for SDG&E to be able to utilize the Project beginning on the Initial Delivery Date and Seller agrees to cause the Project’s SC to cooperate in order to achieve the same.

Notwithstanding any other provision in this Agreement, the Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not occur later than the earlier of (a) one calendar year beyond the Expected Initial Delivery Date or [INSERT], whichever is earlier(the “Initial Delivery Deadline”).

## Delayed Initial Delivery Date.

1. Daily Delay Damages. If Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date, Seller shall owe and pay to SDG&E the Daily Delay Damages for each day of delay beyond the Expected Initial Delivery Date up to the number of remaining days until the Initial Delivery Deadline as follows: Seller shall, at the earliest possible time, but no later than 6 a.m. on the Business Day ten (10) days prior to the Expected Initial Delivery Date, provide SDG&E with Notice of the delay along with Seller’s estimate of the date on which it will satisfy all such conditions (the “Revised Initial Delivery Date”) and its payment of Daily Delay Damages for the period from and including the Expected Initial Delivery Date to but excluding the Revised Initial Delivery Date. If Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Revised Initial Delivery Date, Seller may provide Notices of further estimated delays and payments of Daily Delay Damages subject to the same terms in the preceding sentence. The Daily Delay Damages payments are nonrefundable. Seller will be entitled to a refund (without interest) of any estimated Daily Delay Damages payments paid by Seller which exceed the amount required to cover the number of days by which the date on which Seller actually satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date exceeded the applicable Revised Initial Delivery Date.
2. If Seller fails to pay SDG&E the Daily Delay Damages when due, SDG&E shall be entitled to recover the Daily Delay Damages owed by Seller by drawing on and/or retaining any Construction Period Security.
3. Delays Due to Force Majeure. Subject to Section 3.02(g) and Seller’s compliance with its obligations as the Claiming Party under Section 23.01, if Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date due to Force Majeure, then the Expected Initial Delivery Date will be extended on a day-for-day basis for the duration of the Force Majeure; provided, if an event of Force Majeure remains in effect for more than 365 days, then SDG&E shall have the right to terminate this Agreement with no further obligation between the Parties under this Agreement.

## No Liability of SDG&E.

SDG&E shall have no liability to Seller, regardless of cause (including SDG&E’s actions under Rule 32, any act or omission of SDG&E, including as Buyer under this Agreement, retail provider of electric energy, or as a PTO) for (a) any delay or failure by Seller to achieve the Initial Delivery Date by the Expected Initial Delivery Date, (b) any costs or damages incurred by Seller as a result thereof or any reduction in Seller’s Monthly Capacity Payments resulting from any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, or (c) a reduction in the Term or the Delivery Period.

## Seller’s Queue Position.

Seller must not withdraw the Interconnection Queue Position identified in Section 1.03(c) or assign or transfer that Interconnection Queue Position to any entity or for the benefit of any other agreement other than this Agreement without SDG&E’s prior written consent. [NOTE TO BIDDERS: to be deleted for resources that do not require an interconnection agreement.]

# EVENTS OF DEFAULT; REMEDIES; TERMINATION

## Events of Default.

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

1. 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;
2. 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;
3. The failure 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 any failure to obtain all Required Permits on or before the Required Permit Date), if such failure is not remedied within five (5) Business Days of receipt of Notice; or
4. Such Party becomes Bankrupt.

## 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:

1. Seller fails to comply with any of its affirmative covenants under Section 24.03 or its negative covenants under Section 24.04, unless such failure to comply is cured within a period specifically provided elsewhere in this Agreement applicable to such failure to comply;
2. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without SDG&E’s written consent, which consent may be granted or withheld in SDG&E’s sole discretion;
3. Seller fails to comply with its obligations under Article Thirteen, including failing to post or maintain the Development Period Security, the Construction Period Security, or the Delivery Period Security or applicable Performance Assurance, within three (3) Business Days after SDG&E provides Notice of the failure;
4. Seller makes any material misrepresentation or omission in any report, including status and metering report, or the Milestone Schedule (including the log, records and reports required under Sections 8.01(b), 8.01(c), 8.01(d) , 22.01and 24.03, Appendix 6.01(A) or Appendix 6.01(B)) required to be made or furnished by Seller pursuant to this Agreement and such misrepresentation or omission is not remedied within thirty (30) days after receipt of Notice.
5. Subject to Section 20.01, Seller makes any material misrepresentation or omission in any Availability Notice (including the log, records and reports required under Section 20.01 or Appendix 20.01).
6. 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 SDG&E or the CAISO during the applicable portion of the Delivery Period;
7. Seller fails to achieve the Initial Delivery Date for the Project by the Initial Delivery Deadline, whether due to Force Majeure or otherwise.
8. Seller starts-up, operates, charges, or discharges or permits or causes any third party to start-up, operate, discharge the Project] other than as specifically permitted under Article Seven, Article Sixteen, or Article Eighteen; [NOTE TO BIDDERS: Delete for non-battery resources.]
9. A termination of, or cessation of service under, any agreement necessary for Seller to (i) [interconnect the Project to SDG&E’s electric system] [ NOTE TO BIDDERS: to be deleted for non-interconnection resources], (ii) comply with the CAISO Tariff; *provided*, if termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have ten (10) days from such termination or cessation to cure such default;[NOTE TO BIDDERS: MAY BE MODIFIED DEPENDING ON RESOURCE TYPE]
10. The stock, equity ownership interest in Seller or assets of Seller is directly or indirectly pledged or assigned, or caused or permitted to be pledged or assigned, as collateral to any party other than to Lender without SDG&E’s prior written consent, which consent may be granted or withheld in SDG&E’s reasonable discretion;[INSERT Demand Response Provider SDG&E, CAISO, and CPUC Agreement]
11. By the Required Permit Date, Seller fails to obtain all of the Required Permits, or all applicable appeal periods for such approvals or permits have not expired;
12. Except as permitted under Article Fourteen, Seller does not own or otherwise have control of the Project;
13. Seller fails to comply with any of its obligations under Sections 8.02(b);
14. Seller fails to comply with its obligations under Section 16.02;
15. Subject to the terms of a Collateral Assignment Agreement, the occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in the indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
16. Seller intentionally or knowingly delivers, or attempts to deliver, Product for sale under this Agreement that was not associated with or stored by the Project;
17. Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Resource Adequacy Benefits for SDG&E’s sole benefit as specified under Section 1.01(a);
18. Seller removes from the Site equipment upon which the Contract Capacity or Capacity of the Project has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and the equipment is not returned within five (5) Business Days after Notice from SDG&E.
19. The Project does not provide at least an average of eight five percent (85%) of the Expected Contract Capacity in any twelve (12) consecutive RA Showing Months, except as may be excused for reasons of Force Majeure.

## Early Termination Date.

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, by delivery of Notice to the Defaulting Party, to (a) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an “Early Termination Date,” and to terminate this Agreement in whole or in part, as provided herein, as of such Early Termination Date, (b) accelerate all amounts owing between the Parties under this Agreement which shall be due and payable as of such Early Termination Date, (c) withhold or set-off any payments due to the Defaulting Party under this Agreement, and (d) suspend performance pending termination of this Agreement. The Non-Defaulting Party shall also have the right to pursue any other remedies available at law or in equity, including, where appropriate, specific performance or injunctive relief to the extent permitted under Article Twenty-Seven.

## Calculation of Termination Payment.

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the “Termination Payment” in accordance with this Section 3.04.

1. Termination Payment Prior to Initial Delivery Date. If the Early Termination Date occurs before the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(a).
2. If Seller is the Defaulting Party, then the Termination Payment shall be owed to SDG&E and shall be equal to the entire Development Period Security. SDG&E shall be entitled to immediately retain for its own benefit those funds held as Development Period Security . There will be no amounts owed to Seller. The Parties agree that SDG&E’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(i) are a reasonable approximation of SDG&E’s harm or loss. If SDG&E is the Defaulting Party, then the Termination Payment shall be owed to Seller and shall equal the Development Period Security. There will be no amount owed to SDG&E. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by SDG&E’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(ii) are a reasonable approximation of Seller’s harm or loss.

(b) Termination Payment After the Initial Delivery Date Occurs. If the Early Termination Date occurs after the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(b).

The Termination Payment shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Forward Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

In addition, if SDG&E is the Non-Defaulting Party and SDG&E reasonably expects to incur monetary penalties or fines from the CPUC or the CAISO (or any other Governmental Authority having jurisdiction) because SDG&E will not be able to include the Contract Capacityin its then applicable Compliance Showing as a result of Seller’s Event of Default, then SDG&E may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties or fines are finally ascertained. SDG&E shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SDG&E be required to use or change the utilization of its owned or controlled assets or market positions to minimize the fines and penalties. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Agreement and shall continue until after those penalties or fines are finally ascertained.

## Notice of Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation.

If the Termination Payment is owed to the Non-Defaulting Party, then the Defaulting Party shall pay such amount to the Non-Defaulting Party within five (5) Business Days after the Notice is provided. In no event shall a Termination Payment be owed to the Defaulting Party, and any Termination Payment to the Defaulting Party shall be deemed to be zero ($0).

The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any Disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through mediation and arbitration as provided in Article Twenty-Seven.

## Reserved.

## 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.

# interconnection

## Interconnection Studies. [NOTE TO BIDDERS: TO BE MODIFIED BASED ON BID and technology.]

Seller represents and warrants that, as of the Effective Date, Seller has provided SDG&E with true and correct, up-to-date copies of all available Interconnection Studies to enable delivery of the Project’s output to the Point of Interconnection pursuant to Applicable Law. Seller shall be responsible for all fees and costs associated with the following:

1. Obtaining all Interconnection Studies;
2. Maintaining, complying with and performing Seller’s obligations under the interconnection agreement and related documents throughout the Delivery Period;
3. Reserved.
4. Any Interconnection Facilities that are installed for the purpose of interconnecting the Project with existing transmission or distribution systems; and
5. All costs (including interconnection costs and transmission losses) arising from, relating to or associated with any [NOTE: INSERT NAME OF interconnection agreement] between Seller and SDG&E.[NOTE TO BIDDER: MAY BE MODIFED BASED ON RESOURCE TYPE]

## Reserved.

## Establishment of Charging Energy Service. [NOTE TO BIDDERS: NOT APPLICABLE UNLESS A STORAGE RESOURCE.]

Seller shall take all action necessary, including, if required, requesting and obtaining retail electrical service, to enable the delivery of Charging Energy Requirements to the Project, *[, including the ability to charge the Project with electric energy without restrictions or limitations at any time and at a rate equal to at least the Charging Capacity]*. Seller shall be responsible for all fees and costs associated with and arising from the establishment of the ability to deliver Charging Energy Requirements to the Project

## Acknowledgment.

Seller acknowledges and agrees that nothing in this Article Four is intended to abrogate, amend or modify the terms of any other agreement between it and SDG&E, including without limitation, the interconnection agreement, and that no breach under such other agreement shall excuse a Party’s nonperformance under this Agreement, unless the breach of such other agreement is also an Event of Default under this Agreement.

# DESIGN AND CONSTRUCTION

## Seller’s Obligations. [NOTE TO BIDDERS: provisions to be modified depending on resource type.]

At no cost to SDG&E, Seller shall:

1. Design and construct, or refurbish the Project as required for Seller to perform its obligations under this Agreement;
2. Within *[number] [#]* [NOTE to seller: SDG&E is discussing.]] days prior to the Expected Initial Delivery Date, Seller shall file all applications or other appropriate requests to acquire and maintain all permits, licenses, certifications and approvals necessary for the construction or refurbishment, operation and maintenance of the Project (the “Required Permits”), [including permits to construct from the applicable Air Pollution Control District, or a Facility and Site Certification from the California Energy Commission (pursuant to California Public Resources Code Sections 25500-25543), as applicable, and obtain all Required Permits on or before *[Date]* ][NOTE to seller: to be updated.](the “Required Permit Date”);
3. To the extent required pursuant to Applicable Laws, complete all environmental impact assessments or studies conducted by or for Governmental Authorities pursuant to regulatory programs approved and certified under the California Environmental Quality Act, or environmental impact statements or studies conducted pursuant to the National Environmental Policy Act including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;
4. As required to achieve Commercial Operation for the Project, furnish and install all Protective Apparatus as SDG&E reasonably determines to be necessary for proper and safe operation of the Project in parallel with SDG&E’s electric system or CAISO Grid;[NOTE: MAY BE MODIFIED BASED ON RESOURCE TYPE.]
5. Furnish and install all equipment necessary to prevent, suppress and contain any fire, flooding, explosion, leak of hazardous material or other injury or damage at the Site (“Prevention Equipment”);
6. Throughout the Delivery Period, maintain all permits, licenses, certifications and approvals necessary for the operation and maintenance of the Project;
7. Provide to SDG&E, prior to commencement of any construction activities on the Site, a report from an independent engineer (acceptable to both SDG&E and Seller) certifying that Seller has a written plan for the safe construction and operation of the Project in accordance with Prudent Electrical Practices; and
8. At least thirty (30) days prior to the start of the Delivery Period or as requested by SDG&E, Seller shall provide a completed Master File for the Project to SDG&E (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information).[NOTE: DRP AGREEMENTS TO BE ADDED.]

## Changes in Operational Characteristics.

Seller shall provide to SDG&E Notice of any changes in the operational characteristics of the Project, for SDG&E’s review as far in advance as practicable, but in no event less than thirty (30) days before the changes are to be made. Seller acknowledges that provision of Notice under this Section 5.02 is for SDG&E’s information only and that by receiving such Notice, SDG&E makes no representation as to the economic or technical feasibility, operational capacity or reliability of any changes in the operational characteristics of the Project.

## EPC Contractor. [NOTE TO BIDDERS: may be modified depending on resource type]

Seller shall provide SDG&E with Notice of the name and address of Seller’s EPC Contractor on the later of the Effective Date or the first (1st) Business Day after Seller enters into a contract with an EPC Contractor. If Seller does not have an EPC Contractor selected by the Approval Date, Seller shall provide SDG&E with a shortlist of candidates by the Approval Date.

# CONSTRUCTION PERIOD AND MILESTONES [NOTE to BIDDERS: MAY be modified depending on Project Type]

## Milestone Schedule.

In order to meet the Expected Initial Delivery Date, Seller shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Appendix 6.01(A) (“Milestone Schedule”) and 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, or within five (5) days of SDG&E’s request, Seller shall deliver to SDG&E a monthly progress report, substantially in the form set forth in Appendix 6.01(B) (“Construction Report”), describing its progress in relation to the Milestone Schedule, including projected time to completion of any milestones, for the Project and the Project. Seller shall include in any Construction Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and shall provide any such documents as may be reasonably requested by SDG&E. In addition, Seller shall advise SDG&E, as soon as reasonably practicable, of any problems or issues of which Seller is aware which could materially impact its ability to meet the Milestone Schedule.

## Provision of Information.

During the Term, Seller shall promptly provide SDG&E copies of:

1. Reserved.
2. All agreements with providers of engineering, procurement, or construction services for the Project and all amendments thereto, including any EPC Contract (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information);
3. Any reports, studies, or assessments done for Seller by an independent engineer; and
4. No later than twenty (20) days after each semi-annual period ending on June 30th and December 31st, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs’ status as such and the aggregate amount paid to WMDVBEs during such period.
5. SDG&E has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.02(d).
6. Seller shall make reasonable efforts to accommodate requests by the CPUC (or by SDG&E in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.02(d).

## Inspection Rights.

SDG&E shall have the right at any time during the Term to enter onto the Site during normal business hours on any Business Day to 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 other obligations under this Agreement. Seller shall, or shall cause its EPC Contractors to, provide SDG&E with access to the Site and all applicable documents and records in order to permit SDG&E to determine whether:

1. Seller has obtained and maintained all Required Permits, and that such Required Permits do not contain Permit Requirements that might restrict SDG&E’s ability to charge or discharge, or store energy in, the Project as provided for in this Agreement;
2. All contracts described in Section 6.02(b) have been entered into and become effective on a timely basis and Seller is not in default thereunder;
3. All contracts or other arrangements necessary to interconnect the Project (including transmission arrangements as contemplated in Article Four, electrical, water supply and waste disposal) have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and Seller is not in default thereunder; and
4. All contracts or other arrangements necessary to deliver electric energy to the Project for purposes of charging the Project have been entered into and become effective on a timely basis and Seller is not in default thereunder.

# COMMISSIONING AND TESTING

## Initial Commercial Operation Test.

At Seller’s cost and at least ninety (90) days prior to the Initial Delivery Date, Seller shall provide to SDG&E certification of the Project's NQC and EFC (as applicable) from an SDG&E approved third party consultant. The certification shall be deemed the Initial Commercial Operation Test and shall establish the Contract Capacity for purposes of calculating the Monthly Capacity Payment, and [Appendix 1.01][NOTE to bidders: only if applicable] and Section 9.02 shall be deemed to be amended to reflect the Contract Capacity certified during such test by SDG&E test personnel This test shall be deemed a Seller Initiated Test.

## Periodic Testing.

1. SDG&E Contract Capacity and Ancillary Services Testing. Once per each Contract Year (after the initial Contract Year), Seller shall, upon SDG&E’s request, schedule and complete a Contract Capacity & Ancillary Services Test in accordance with Appendix 7. This test shall be deemed a Buyer Dispatched Test. [NOTE TO BIDDERS: delete if not offered as part of bid.]
2. No Adjustment to Contract Capacity. Notwithstanding any other provision in this Agreement, the Contract Capacity shall not be adjusted to conform to the results of any RA Capacity Qualification Test or [Contract Capacity & Ancillary Services Test] [NOTE TO BIDDERS: to be deleted if not applicable to bid.]
3. RA Capacity Qualification Tests. Seller is responsible for all costs associated with all RA Capacity Qualification Tests conducted pursuant to this Article Seven and all costs associated with providing any information related to all RA Capacity Qualification Tests.

## Updated NQC or EFC.

Seller shall notify SDG&E within three (3) Business Days after Seller, or the Project’s SC, receives notice from the CAISO or CPUC, or Seller or the Project’s SC becomes aware, that the NQC or EFC of the Project has changed, regardless of whether there is an increase or decrease in any such NQC or EFC.

# SELLER’S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

## Seller’s Operation Obligations.

1. Seller shall at all times operate the Project safely, including in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including the standards established by the California Electricity Generation Facilities Standards Committee pursuant to Public Utilities Code Section 761.3, if applicable, and enforced by the CPUC, and CAISO mandated standards, as amended from time to time (collectively, “Industry Standards”).
2. Seller shall maintain all records applicable to the Project, including the electrical characteristics of the Project and settings or adjustments of the Project control equipment (including the power conversion system) and protective devices, and a daily log of maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of the Project. In addition, Seller shall maintain a daily operations log for the Project which shall include information on charging and discharging (including charging and discharging efficiency), electric energy consumption and efficiency, Stored Energy Level, and availability (including availability to charge and discharge and its ability to store energy). Information maintained pursuant to this Section 8.01(b) shall be provided to SDG&E, within fifteen (15) days of SDG&E’s request.
3. Seller shall maintain and provide to SDG&E, within fifteen (15) days of SDG&E’s request, accurate records with respect to the Project’s’ Initial Commercial Operation Test, RA Capacity Qualification Tests, and Contract Capacity & Ancillary Services Tests, including the outcomes of such tests.
4. Seller shall maintain and make available to SDG&E and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements and Industry Standards, including CPUC General Order 167, if applicable. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Applicable Laws, Permit Requirements, or Industry Standards.
5. SDG&E or the CAISO may require Seller, at Seller’s expense, to demonstrate to SDG&E’s reasonable satisfaction the correct calibration and operation of Seller’s Protective Apparatus any time SDG&E or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the PTO’s electric system or CAISO Grid.

## Seller’s Maintenance and Repair Obligations/Aggregated Resources

1. Seller shall inspect, maintain, and repair the Project in accordance with applicable Industry Standards and Prudent Electrical Practices, including safety practices and standards. Seller shall maintain, and deliver to SDG&E upon request, maintenance and repair records of the Project.
2. Seller shall promptly make all necessary repairs to the Project and take all actions necessary in order to provide the Product to SDG&E in accordance with the terms of this Agreement.

# MONTHLY RA CAPACITY PAYMENTS AND OTHER COMPENSATION

## Compensation.

1. Delivery Period. Compensation to Seller for the Product shall consist of a Monthly RA Capacity Payment calculated in accordance with Section 9.02(a). Payments will be paid monthly, in arrears, in accordance with Article Eleven, for each month of the RA Delivery Period. Other payments and costs will be allocated during the RA Delivery Period in accordance with Section 9.03.

## Monthly RA Capacity Payment.

1. Delivery Period. SDG&E shall make a Monthly RA Capacity Payment, payable monthly after the applicable Showing Month, in arrears, to Seller for each Showing Month of the RA Delivery Period, provided that such Monthly RA Capacity Payment is subject to reduction in accordance with this Agreement. The Monthly RA Capacity Payment for each Showing Month of the RA Delivery Period is calculated as set forth below,

“Monthly RA Capacity Payment” = A x B

where:

*A* = applicable Monthly RA Capacity Price for that Showing Month (in $/kW-mo)

*B =*

*C* = Expected Contract Quantity (in kW) provided by Seller to SDG&E pursuant to and consistent with Section 12.03 for the applicable day of the Showing Month, provided that, solely for purposes of calculating this item “C”, the amount of Product (in kW) provided on any particular day of any Showing Month may not exceed the Contract Capacity during such day

D = Aggregate kilowatts of Shortfall Capacity associated with the applicable day of the Showing Month; *provided*, Shortfall Capacity may not exceed Contract Capacity

i = Each day of Showing Month

n = number of days in the Showing Month

The Monthly RA Capacity Payment calculation shall be rounded to two decimal places.

## Allocation of Other Payments and Costs During RA Delivery Periods.

1. Seller shall retain any revenues it may receive from and pay all costs, charges, fees or penalties charged by the CAISO or any other third party with respect to the Project.
2. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for each day of each Showing Month provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.
3. Seller bears sole responsibility for establishing and compensating its SC. Seller shall be responsible for (i) managing, purchasing, scheduling, and transporting all Charging Energy Requirements, (ii) all costs for the Project’s Charging Energy Requirements, and (iii) any Governmental Charges associated with the Charging Energy Requirements.

# Allocation of Standard capacity product payments and charges; ADJUSTMENTS TO MONTHLY ENERGY CAPACITY PAYMENT

## Availability

1. Allocation of Standard Capacity Product Payments and Charges. During the Delivery Period, if the Project is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under the Tariff, or any similar standards, charges or payments that may be implemented for resources providing flexible capacity resource adequacy attributes or other types of Resource Adequacy Benefits, any Availability Incentive Payments and other resulting payments will be for the benefit of Seller and for Seller’s account and any Non-Availability Charges and other resulting charges will be the responsibility of Seller and for Seller’s account.
2. RA Capacity Reduction. If, at any time during the Delivery Period the Project’s Net Qualifying Capacity does not equal its Contract Capacity, then a RA Adjustment shall be calculated in the following manner:

(c) “RA Adjustment” = Net Qualifying Capacity of the Project / the applicable Contract Capacity;  
  
*provided*, if the RA Adjustment is greater than one (1), then the RA Adjustment for the Project shall equal one (1). For the Project, the RA Adjustment shall be applied to the calculation of the Monthly Capacity Payment for the Project under Section 9.02.

## Ancillary Service No Pay Charges.[NOTE TO BIDDERS: if applicable to your bid.]

Seller shall be responsible for paying to SDG&E all CAISO-calculated charges that are determined by SDG&E in good faith to be caused by the Seller’s failure to provide ancillary services when awarded.

# PAYMENT AND BILLING

## Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (excluding Termination Payments). As soon as practicable 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, *provided* that the Monthly Capacity Payment related to a Showing Month will not be deemed to be incurred until such Showing Month has concluded (the “Obligation Month”), together with all supporting documentation and calculations reasonably necessary to evidence all amounts charged thereunder. The Parties acknowledge that data necessary to calculate certain payments obligations under this Agreement may not be available in the month immediately following the applicable Obligation Month. Any such payments obligations will be included in an invoice issued during the calendar month following the month during which such data becomes available. An invoice can only be adjusted or amended after it was originally rendered within the time frames set forth in Section 11.03, below. If an invoice is not rendered within twenty-four (24) months after the close of the Showing Month, the right to any payment for that Showing Month under this Agreement is waived.

## Timeliness of Payment.

All invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of the month in which the owing Party receives the invoice, or the tenth (10th) day after the owing Party’s 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, including amounts in dispute pursuant to Section 11.03, will be deemed delinquent and will accrue interest at the 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.

## Disputes and Adjustments of Invoices.

A Party may adjust any invoice rendered by it for an Obligation Month to correct any arithmetic or computational error, include additional charges or claims, or make an adjustment pursuant to Article 9 within twelve (12) months after the close of such Obligation Month. A receiving Party may, in good faith, dispute the correctness of any invoice or of any adjustment to any invoice previously rendered to it by providing Notice to the other Party within the later of (i) twelve (12) months of the date of receipt of such invoice or adjusted invoice, or (ii) twelve (12) months after the close of the Obligation Month. Failure to provide such Notice within the time frames set forth in the preceding sentence waives the dispute with respect to such invoice. A Party disputing all or any part of an invoice or an adjustment to an invoice previously rendered to it shall pay the undisputed portion of the invoice when due, but shall have the option, in its sole discretion, to withhold payment of the disputed amount; *provided,* such Party must provide Notice to the other Party of the basis for and amount of the disputed portion of the invoice that has not been paid. The disputed portion of the invoice must be paid within two (2) Business Days of resolution of the dispute, along with interest accrued at the Interest Rate from and including the original due date of the invoice to but excluding the date the disputed portion of the invoice is paid in full. 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 but excluding the date repaid or deducted by the Party receiving such overpayment.

## Netting Rights.

SDG&E reserves the right to net amounts that would otherwise be due to Seller under this Agreement against payment of any amounts owed to SDG&E by Seller arising out of, or related to, this Agreement and any other SDG&E agreement, tariff, obligation or liability. Nothing in this Section 11.04 limits SDG&E’s rights under applicable tariffs, other agreements or Applicable Law.

# product delivery obligations (RA Delivery periodS)

12.01 Product.

Seller shall provide Buyer with the Product each day of each Showing Month in accordance with this Article Twelve. Buyer may list the Resource Adequacy capacity associated with the Project as Non-Specified RA Replacement Capacity or Specified RA Replacement Capacity.

12.02. Adjustments to Product Provided.

(a) Planned Outages: Seller shall not schedule any Planned Outages of the Project during the applicable Must Offer Obligation hours in the then current CAISO Tariff requirements.

(b) Reductions in Net Qualifying Capacity: Subject to Section 8.02, Seller’s obligation to deliver the Product may be reduced in the event the Project experiences a reduction in its Net Qualifying Capacity after the Initial Delivery Date as determined by the CAISO.

12.03. Delivery of Product.

Seller shall provide Buyer with the Contract Capacity for each day of each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Project’s SC to submit Supply Plans in accordance with the Tariff and any other decisions or orders of the CPUC associated with providing the Product under this Agreement, to identify and confirm the Contract Capacity provided to Buyer for each Month so that the total amount of Contract Capacity identified and confirmed for Month equals the Contract Capacity for such Month.

(b) Seller shall or shall cause the Project’s SC to (i) submit written notification to Buyer in a form substantially similar to Exhibit D, or in a form as communicated in writing by Buyer to Seller, no later than fifteen (15) Business Days before the applicable Compliance Showing deadlines for each Month, that Buyer will be credited with the Contract Capacity for such Month in the Project’s SC Supply Plan.

12.04. Indemnities for Failure to Deliver Contract Capacity.

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller’s failure to provide any portion of the Contract Capacity for any portion of the Month;

(b) Seller’s failure to provide notice of the non-availability of any portion of the Contract Capacity for any portion of the month as required under Section 12.03;

(c) 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 SDG&E be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse SDG&E for those penalties, fines or costs, then SDG&E may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

12.05. Buyer’s Re-Sale of Product.

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement (“Resold Product”), Seller agrees, and agrees to cause the Project’s SC, to follow Buyer’s instructions and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees, and agrees to cause the Project’s SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Project’s SC to comply with the terms of this Agreement, and Seller would have had liability to Buyer under this Agreement for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Agreement, including without limitation, pursuant to Section 12.04, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

12.06. Post-Showing Replacement Capacity.

For any Showing Month, if CAISO determines, in accordance with the Tariff, that any portion of the Contract Quantity for any portion of a Showing Month which was shown by Buyer in its Compliance Showings requires outage replacement in accordance with Section 40.7 of the Tariff (“Shortfall Capacity”), Seller’s Monthly RA Capacity Payment will be reduced by such quantity of such Shortfall Capacity. Neither Seller, nor the Project’s SC shall have the right to provide Buyer with RA Replacement Capacity with respect to such Shortfall Capacity.

12.07. Resource ID and Bundled Customer Information.

On or before the later of (1) the first day of the first month that begins after the date that is sixty (60) days following CPUC Approval, and (2) the date that is sixty (60) days prior to the first Showing Month, and on a monthly basis thereafter no less than sixty (60) days prior to the applicable Showing Month if any of the information below changes, Seller shall:

* 1. Provide to Buyer the Resource ID(s) for the PDR or RDRR providing Product pursuant to this Agreement.
  2. Confirm in writing to Buyer that the PDR or RDRR identified by Seller is comprised solely of bundled service customers or unbundled service customers.

# CREDIT AND COLLATERAL

## Financial Information.

If requested by one Party, the other Party shall deliver the following financial statements, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP, the International Financial Reporting Standards (“IFRS”), or any successor to either of the foregoing (“Successor”):

1. Within one hundred twenty (120) days following the end of each fiscal year, a copy of its 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; and
2. Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) 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.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP, IFRS, or Successor. In each case, the financial statements specified above must be certified in accordance with all Applicable Laws and regulations, including all applicable SEC rules and regulations, if such Party is a SEC reporting company, or certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments) if such Party is not a SEC reporting company.

If a Party’s financial statements are publicly available electronically on the website of that Party or the SEC, then the Party shall be deemed to have met the requirements of this Section 13.01. 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.

## Seller’s Credit Requirements.

1. Credit Requirement During Pre-Construction Period. From the Effective Date to the CP Satisfaction Date, Seller shall provide Performance Assurance in an amount equal to $[\_\_\_\_\_\_\_\_] [NOTE to Bidders: Please see RFO document for collateral requirements.] (the “Development Period Security”) in order to secure Seller’s obligations hereunder. Except to the extent Seller elects to apply the Development Period Security to the Construction Period Security, 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 by either Party under Section 2.02(c).
2. Credit Requirement During Construction Period. From the CP Satisfaction Date to the Initial Delivery Date, Seller shall provide additional Performance Assurance so that the total amount of Performance Assurance is equal to $[insert] [NOTE to Bidders: Please see RFO document for collateral requirements.] (the “Construction Period Security”) in order to secure Seller’s obligations hereunder. Except to the extent Seller elects to apply the Construction Period Security to the Delivery Period Security, Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Period Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
3. Credit Requirements During Delivery Period. Throughout the Delivery Period, Seller shall provide Performance Assurance to Buyer in an amount equal to [$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).

## Administration of Performance Assurance.

1. Interest Payments on Cash. Performance Assurance posted in cash shall earn Simple Interest in accordance with SDG&E’s Rule 7, section C; Interest on Deposit. SDG&E shall retain any such interest amount as additional Performance Assurance hereunder for so long as this Agreement is in effect.
2. Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Appendix 13.02(b), issued by a Qualified Institution acceptable to SDG&E, and subject to the following provisions:
3. Each Letter of Credit shall be maintained for the benefit of SDG&E. Seller shall:
4. renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
5. if the Qualified Institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SDG&E at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
6. if the Qualified Institution issuing a Letter of Credit fails to honor SDG&E’s properly documented request to draw on an outstanding Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SDG&E, in its sole discretion, within one (1) Business Day after such refusal;

*provided,* if Seller fails to perform in accordance with (A), (B), or (C) above, Seller shall be deemed to have failed to meet its obligation to provide Performance Assurance..

1. Upon the occurrence of a Letter of Credit Default, Seller shall provide to SDG&E either a substitute Letter of Credit or alternative Performance Assurance acceptable to SDG&E, 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 (a) under the definition of Letter of Credit Default applies);
2. Upon, or at any time after SDG&E has determined that Seller (A) has forfeited all or part of its Development Period Security, or (B) owes Daily Delay Damages pursuant to Section 2.05(a), then SDG&E may draw on any undrawn portion of any outstanding Letter of Credit. Cash proceeds received by SDG&E from drawing upon the Letter of Credit shall be for the account of SDG&E.
3. Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then SDG&E may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the Qualified Institution 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 SDG&E from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller’s obligations to SDG&E under this Agreement and SDG&E shall have the rights and remedies set forth in Section 13.03 with respect to such cash proceeds. Notwithstanding SDG&E’s receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to provide sufficient Performance Assurance and (B) for any amounts owing to SDG&E and remaining unpaid after the application of the amounts so drawn by SDG&E.
4. 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.

## 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 SDG&E a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right of setoff against), and assignment 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 SDG&E, and Seller agrees to take such action as SDG&E reasonably requires in order to perfect SDG&E’s 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 or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SDG&E may do any one or more of the following:

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;
2. Exercise any of its rights of setoff against any and all property of Seller in SDG&E’s possession;
3. Draw on any outstanding Letter of Credit issued for its benefit; and
4. Liquidate all Performance Assurance then held by or for the benefit of SDG&E free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

SDG&E 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 SDG&E after such application), subject to SDG&E’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## 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, but not limited to, those provisions set forth in Article Thirteen and Article Three, neither Party:

1. 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
2. will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Thirteen and Article Three of this Agreement; 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.

## 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 13.05(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.

# COLLATERAL ASSIGNMENT

## Consent to Collateral Assignment.

Subject to the provisions of this Article Fourteen, Seller shall have the right to assign this Agreement to Lender as collateral for any financing or refinancing of the Project. SDG&E 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 agreed to by SDG&E, Seller and Lender, and shall be consistent with industry practice.

# GOVERNMENTAL AND ENVIRONMENTAL CHARGES

## Governmental Charges.

Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority (“Governmental Charges”) on or with respect to the Product at or before the Energy Delivery Point, and SDG&E shall pay or cause to be paid all Governmental Charges on or with respect to Product after the Energy Delivery Point. In the event Seller is required by Applicable Laws to remit or pay Governmental Charges which are SDG&E’s responsibility hereunder, SDG&E shall promptly reimburse Seller for such Governmental Charges. If SDG&E is required by Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, SDG&E may deduct the amount of any such Governmental Charge from any amounts due to Seller under Article Eleven 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 Applicable Laws.

## 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, including 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 SDG&E and Seller shall indemnify, defend and hold SDG&E harmless from and against all liabilities, damages, claims, losses, costs and expenses (including attorneys’ fees) incurred by or brought against SDG&E in connection with all Required Permits and compliance with Applicable Laws and Permit Requirements.

# CHARGING ENERGY MANAGEMENT

## Seller’s Charging Energy Management Responsibilities.

Except as set forth in Section 16.03 or as expressly set forth in this Agreement, during the Delivery Period, Seller shall be responsible for managing, purchasing, scheduling, and transporting all of the Charging Energy Requirements of the Project to the Energy Delivery Point

## Seller Charging Energy Responsibilities.

Seller shall take any and all action necessary to deliver the Charging Energy Requirements to the Project in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy Requirements to the Project.

## Charging Energy Costs, Charges, and Payments.

Seller shall be responsible for the electric energy costs associated with providing the Charging Energy Requirements to the Energy Delivery Point (“Charging Energy Costs”).

If SDG&E pays any electric energy costs which are Seller’s responsibility under this Agreement, SDG&E may deduct the amount of such electric energy costs from any amounts due to Seller pursuant to the terms of this Agreement.

# STORAGE OF ELECTRIC ENERGY

## Title, Possession, and Risk of Loss.

During the Delivery Period, Seller shall hold title to, possession of, and risk of loss of the Charging Energy Requirements 17.02. Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party from and against any claims arising from or out of any event, circumstance, act, or incident first occurring or existing during the period when control and title to the Charging Energy Requirements is vested in such Party in accordance with Section 17.01.

# CAISO AND NON-SDG&E DISPATCHES

## CAISO Dispatch.

Any award, instruction to charge, or dispatch of any Project by the CAISO during the Delivery Period for any reason shall be deemed to be a dispatch or request to charge by SDG&E for purposes of this Agreement. The Energy dispatched shall be for the CAISO’s benefit hereunder, and Seller shall be paid from the CAISO such CAISO awards, instruction to charge, and dispatches in accordance with the terms of this Agreement as if such dispatches or instruction to charge were directed by SDG&E. Seller shall be entitled to receive and retain for its own account any and all CAISO revenues for such awards and dispatches, except as otherwise stated in this Agreement, which shall be remitted to SDG&E.

## Non-SDG&E Dispatch.

Seller shall not start-up or discharge the Project other than pursuant to a Dispatch Notice. Seller shall indemnify, defend, and hold SDG&E harmless against the costs or losses of SDG&E resulting from a Non-SDG&E Dispatch, including all (i) charges, sanctions, and penalties imposed by CAISO, and (ii) the Charging Energy Requirements.

# SCHEDULING COORDINATOR

19.01 Seller or Third Party as Scheduling Coordinator

Throughout the Delivery Term, Seller shall act, or cause a Third Party to act, as the CAISO Scheduling Coordinator for the Project. The Scheduling Coordinator, shall perform its duties and functions in accordance with the CAISO Tariff, and shall dispatch the Project in accordance with any Dispatch Notice from SDG&E as set forth in Article 20.

# DISPATCH NOTICES AND OPERATING RESTRICTIONS

## Availability Notice.

For each Operating Day Seller shall provide to SDG&E using the SDG&E-provided web-based system (“Outage Management System an hourly schedule of the Available Capacity that the Project is expected to have for each hour of such Operating Day, no later than two (2) Business Days before the Trading Day applicable to such Operating Day (the “Availability Notice”). Seller must update SDG&E immediately using the Outage Management System if the Available Capacity of any Project changes or is likely to change after the Availability Notice is submitted. Seller must follow up all such updates through the Outage Management System with telephonic updates to SDG&E’s personnel designated in Appendix 20.05 to receive such communications. Seller shall accommodate SDG&E’s reasonable requests for changes in the time or form of delivery of the Availability Notices. If an electronic submittal via the Outage Management System is not available, or is not possible for reasons beyond a Party’s control, Seller may provide Availability Notices using the form attached in Appendix 20.01 by (in order of preference unless the Parties agree to a different order) electronic mail, facsimile transmission or, as a last resort, telephonically to SDG&E’s personnel designated in Appendix 20.05 to receive such communications.

## Dispatch Notice.

SDG&E will have the right to dispatch the Project by providing a Dispatch Notice to Seller electronically (in the form attached in Appendix 20.02 or other available form agreeable to SDG&E), and subject to the requirements and limitations set forth in this Agreement. SDG&E will provide such Dispatch Notice to Seller in accordance with the Tariff market notice timelines for submitting day-ahead and real-time schedules to CAISO. Subject to Section 20.04, each Dispatch Notice will be effective unless and until SDG&E modifies such Dispatch Notice by providing Seller with an updated a Dispatch Notice. SDG&E will have the right to provide an updated Dispatch Notice at any time up until 30 minutes prior to the beginning of each operating hour. If an electronic submittal is not possible for reasons beyond SDG&E’s control, SDG&E may provide Dispatch Notice by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Seller’s personnel designated in Appendix 20.05 to receive such communications. Seller shall be entitled to receive and retain for its own account any and all CAISO revenues for such awards and dispatches, except as otherwise stated in this Agreement, which shall be remitted to SDG&E.

## Start-Up Notices.

If a Dispatch Notice includes a Start-Up, Seller shall notify SDG&E electronically when the Project has initiated a start, and is synchronized and at Minimum Load ready to be dispatched to the required output. Seller shall provide an electronic or facsimile copy of a completed Start-Up Notice, in the form attached to this Agreement in Appendix 20.03, to SDG&E within twenty-four (24) hours of the Start-Up. When a Dispatch Notice requires a Start-Up or shutdown, Seller will be responsible for coordinating all required switchyard switching with the Grid Control Center.

## Operating Restrictions.

1. Subject to Section 7.03, all Operating Restrictions associated with the Product are specified in Appendix 1.01. In providing a Dispatch Notice , SDG&E shall comply with the applicable Operating Restrictions. If SDG&E submits a Dispatch Notice that does not conform with the Operating Restrictions, then Seller shall immediately notify SDG&E of the non-conformity and SDG&E will modify its Dispatch Notice to conform to the applicable Operating Restrictions. Until such time as SDG&E submits a modified Dispatch Notice, Seller shall, as applicable, deliver the Product in accordance with the Operating Restrictions or charge the Project in accordance with the Operating Restrictions, and the Project will not be deemed to be unavailable, but only to the extent the Project was otherwise available but could not be dispatched or charged because of its inability to operate outside of the Operating Restrictions.
2. Notwithstanding anything to the contrary in this Agreement, Section 20.04(a), or the Operating Restrictions, if the Project is able to meet its Contract Capacity, SDG&E is permitted to issue a Dispatch Notice that dispatches the Project to its Contract Capacity and SDG&E is not required to modify any non-conforming Dispatch Notice that dispatches the Project to its Contract Capacity; *provided*, in instances where the Contract Capacity is greater than the maximum capability set forth in the Operating Restrictions, Seller shall deliver the Product in accordance with the Operating Restrictions, and the Project will not be deemed to be unavailable, but only to the extent the Project was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Restrictions.

## Communication Protocols.

The Parties shall agree to the communication protocols outlined in Appendix 20.05 to facilitate the exchange of information between the Parties.

## 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 Laws.

# METERING, COMMUNICATIONS AND TELEMETRY

## SDG&E Access.

All communication, metering, telemetry, and associated operation equipment will be centralized into the Project’s Distributed Control System (“DCS”). Seller shall configure the Project’s DCS so that SDG&E may access it. Seller shall ensure that the access link will provide a monitoring and control interface to enable automatic control for charging and discharging of the Project and provide real-time information regarding the to SDG&E. Seller shall link the systems via an approved SDG&E communication network, utilizing existing industry standard network protocol, as approved by SDG&E. The connection will be bidirectional in nature and used by the Parties to exchange all data points to and from the SDG&E monitoring system.

## Control Logic [NOTE TO BIDDERS: To be modified based on technology type]

Seller will ensure that the Project’s DCS control logic will be configured to control the Project in multiple configurations. The Project’s control logic will incorporate control signals from multiple locations to perform dispatch, charging and Ancillary Services functions. Control logic will perform all coordinated megawatt control and Automatic Generation Control (“AGC”) independently for the Project.

## Delivery of Data.

At least thirty (30) days prior to the Expected Initial Delivery Date, Seller shall provide SDG&E with all facility and metering information necessary to communicate with SDG&E as may be requested by SDG&E, including, but not limited to, the information set forth in Appendix 21.03.

## Satellite Communication System.

Seller is responsible for installing, testing, commissioning and maintaining the Satellite Communications System (“SCS”) at the Project in accordance with instructions provided by SDG&E and the SCS vendor. Seller shall grant SDG&E reasonable access to the Site for routine calibration and maintenance of the SCS during the Delivery Period.

## SDG&E Access.

Seller shall take all actions and execute all documents reasonably necessary to grant SDG&E access to the metering, communications, and telemetry systems specified in this Article Twenty-One during the Delivery Period.

# OUTAGES

## Planned Outages

No later than January 15, April 15, July 15 and October 15 of each Contract Year during the Delivery Period, and at least sixty (60) days prior to the Guaranteed Initial Delivery Date, Seller shall submit to Buyer Seller’s schedule of proposed Scheduled Outages (“Outage Schedule”) for the following twelve (12)-month period in a the 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. The total amount of Scheduled Outages pursuant to this Section 22.01 for each Contract Year shall not exceed (i) for any Contract Years in which routine maintenance is scheduled in accordance with Accepted Electrical Practices, [\_\_\_\_] (or a prorated amount in the case of the first Contract Year), and (ii) for any Contract Years in which non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices, an additional [\_\_] hours (or a prorated amount in the case of the first Contract Year) per Contract Year for a maximum aggregate amount under clauses (i) and (ii) of [\_\_\_] hours for a Contract Year in which routine maintenance is scheduled in accordance with Accepted Electrical Practices and non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices.

## Limitations on Planned Outages.

(a) No outages shall be scheduled or planned from May 1 through October 31 during the Delivery Period.

## Notice of Forced Outages.

Seller shall communicate the occurrence of any Forced Outage utilizing SDG&E’s Outage Management System to enter outage information as required by the Tariff, within ten (10) minutes of the commencement of the Forced Outage. Seller shall telephone SDG&E within twenty (20) minutes of the Forced Outage, at the telephone number(s) listed in Appendix 20.05. If the CAISO imposes a sanction or penalty as a result of Seller’s failure to timely provide SDG&E with a report of a Forced Outage or Planned Outage, Seller shall be responsible for such sanction or penalty.

## Reports of Forced Outages.

Seller shall promptly prepare and provide to SDG&E, using SDG&E-provided software or forms, all reports of Forced Outages or Planned Outages that SDG&E may reasonably require for the purpose of enabling SDG&E to comply with CAISO requirements or any Applicable Laws.

## Inspection During Showing Month.

In the event of a Forced Outage, SDG&E shall have the right to inspect the Project and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with SDG&E during any such inspection.

# FORCE MAJEURE

## No Default for Force Majeure.

Subject to Section 8.02(b), neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when and to the extent failure of performance is caused by Force Majeure; provided, a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused. Force Majeure Claim.

Subject to Section 8.02(b), 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; *provided*:

1. the Claiming Party, no more than five (5) Business Days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
2. the Claiming Party, within five (5) Business Days, of providing Notice of occurrence of the Force Majeure, provides evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;
3. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
4. 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.

## Termination.

The non-Claiming Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided, if an event of Force Majeure extends for more than three hundred sixty-five (365) consecutive days and materially and adversely affects the performance of the Claiming Party.

# REPRESENTATIONS, WARRANTIES AND COVENANTS

## Representations and Warranties of Both Parties.

As of the Effective Date and the Approval Date, each Party represents and warrants to the other Party that:

1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
2. Except as provided in Section 2.02 and Article Five, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
3. The execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action (other than regulatory approval as set forth in Section 2.02) 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 applicable to it;
4. This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
5. It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which could result in it becoming Bankrupt;
6. 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;
7. No Event of Default with respect to it has occurred and is continuing and no such Event of Default would occur as a result of its entering into or performing its obligations under this Agreement;
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;
9. It is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
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, as applicable, under this Agreement.

## Representations and Warranties of Seller.

Seller represents and warrants to SDG&E that:

1. As of [Insert date], Seller has Site Control. [NOTE to bidders: will be modified based on resource type]
2. [NOTE: to be inserted: applicable representation to maintain PDR/RDRR status.]

(c) As of the Effective Date and the Approval Date, to the best of Seller’s knowledge, each specification and description of the Project and the Project and the Product in Article One (and related Appendices) is true and correct.

## Seller’s Affirmative Covenants.

1. Seller shall maintain and preserve its existence as a *[insert applicable corporate incorporation information]* formed under the laws of the State of *[XX]* and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
2. Seller shall, from time to time as requested by SDG&E, 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 SDG&E with respect to its Security Interest furnished pursuant to this Agreement.
3. Seller shall ensure that no less than twenty percent (20%) of Seller’s aggregate costs to complete the initial development, engineering, procurement and construction of the Project are funded by equity contributions to Seller. The amount funded by equity contributions shall not be less than *[TBD]*. The foregoing shall not impose any obligations that survive the Initial Delivery Date, *provided* that if SDG&E determines after the Initial Delivery Date that Seller breached this obligation with respect to any time prior to the Initial Delivery Date, SDG&E retains all rights under this Agreement, including, without limitation under Article Three, with respect to such occurrence.
4. Seller shall provide and execute all documents and instruments reasonably necessary (including documents amending this Agreement in ways not materially adverse to Seller and documents reflecting compliance 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 SDG&E’s sole benefit through the Delivery Period.
5. Seller shall obtain, maintain and remain in compliance with all permits, agreements (including interconnection agreements) and rights (including transmission rights) necessary to operate the Project and provide the Product to SDG&E in accordance with this Agreement.
6. Seller shall throughout the Delivery Term maintain Market Based Rate Authority from FERC to sell Product to Buyer under the terms of this Agreement.
7. Seller shall deliver to SDG&E the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
8. Seller shall maintain Site Control throughout the period beginning on the [INSERT] and ending on the last day of the Term.
9. Seller shall, throughout the Term, promptly provide SDG&E with Notice of any change in any of the specifications or descriptions set forth in Article One (and related Appendices).
10. Throughout the Delivery Period (i) Seller shall, and shall cause the Project’s SC to promptly (and in any event within one (1) Business Day of the time Seller or such SC receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Project as CPM Capacity, and (ii) in the event the CAISO makes such a designation Seller shall, and shall cause the Project’s SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation, provided that Buyer shall have the exclusive right to offer the Product and Project, or any portion thereof, to the CAISO as CPM Capacity during any Showing Month.
11. With respect to the Delivery Period, Seller shall notify the SC of the Project that (i) Seller has transferred the Product to Buyer with respect to each day of each Showing Month, and that such SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Agreement, (ii) Seller is obligated to cause the Project’s SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadlines for each Compliance Showing, the applicable Contract Capacity of the Project for each day of such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period, and (iii) Buyer is entitled to the revenues set forth in Section 9.03, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
12. With respect to the Delivery Period, Seller shall (i) provide all information needed for the Product to be shown on Supply Plans and Compliance Showings and to be used to satisfy RA Compliance Obligations, including, without limitation providing information with respect to the amount of Flexible Capacity and Inflexible Capacity available to be included in any applicable Supply Plan and Compliance Showing and (ii) provide any information requested by SDG&E related to the Project that is required to be provided to the CAISO or CPUC in order for SDG&E to comply with the Tariff or other Applicable Laws.

## Seller’s Negative Covenants.

1. Seller shall not issue any Disqualified Stock, other than Disqualified Stock issued in connection with the funding of the development, construction, operation, reconstruction, restoration or refinancing of the Project.
2. Except for (i) liens for the benefit of Lender, and (ii) liens cured or removed within thirty (30) days after their incurrence, 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 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 SDG&E of any attachment or imposition of any lien against Seller’s interest in the Site, the Project, or any part thereof or interest therein.
3. 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 and operation of the Project.
4. Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.
5. During any period during which a Seller is a Defaulting Party, Seller shall (i) not 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 equivalent payment to any Affiliate of Seller.
6. Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, the Required Permits as collateral to any party other than to Lender or Lender’s agent without SDG&E’s prior written consent, which consent may be granted or withheld in SDG&E’s sole discretion.
7. Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, any ownership interest in Seller if such pledge or assignment would have a material adverse effect on the Project or on Seller’s ability to perform its obligations under this Agreement. Seller shall provide SDG&E with written Notice of any direct or indirect pledge or assignment of any ownership interest in Seller at least ten (10) Business Days prior to such pledge or assignment.

# LIMITATIONS

## Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, 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.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE TWENTY-EIGHT (INDEMNIFICATION) AND ARTICLE THIRTY (INSURANCE) , 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.

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.

## No Representation by SDG&E.

Any review by SDG&E of the Project, including the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for SDG&E’s information. By making such review, SDG&E 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 SDG&E of the Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Project by SDG&E, constitutes any such representation by SDG&E. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

# RECORDS

## 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 four (4) years after final payment is made under this Agreement.

## Other Regulatory and Governmental Requirements.

At SDG&E’s request, Seller shall maintain and deliver to SDG&E copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under this Agreement, in order to comply with all Applicable Laws.

## Audit Rights.

SDG&E shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall have the right, at its sole expense, to hire an independent third party reasonably acceptable to SDG&E to audit the documents, records or data of SDG&E related to this Agreement during normal working hours to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Such independent third party must sign a confidentiality agreement in substance reasonably acceptable to SDG&E before examining SDG&E’s documents, records or data. Each Party shall promptly comply with any reasonable request by the other Party under this Section 26.03 and provide copies of documents, records or data to the requesting Party. The rights and obligations under this Section 26.03 shall survive the termination of this Agreement for a period of two (2) years.

# DISPUTE RESOLUTION

## 27.01 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 27. 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 27.

## 27.02 Management Negotiations.

* + - * 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.
        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.
        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.
        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 27.02(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 27.02(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.

## 27.03 Arbitration.

1. Any dispute that cannot be resolved by management negotiations as set forth in Section 27.02 above shall be resolved through binding arbitration by a retired judge or justice from the [AAA][JAMS] panel (the “Arbitrator”) conducted in San Diego, California, administered by and in accordance with [AAA’s Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] Arbitration Rules and Procedures] (“Arbitration”).
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] [JAMS [Comprehensive][Streamlined] Arbitration Rules and Procedures].
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.
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.
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.
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.
7. Judgment on the award may be entered in any court having jurisdiction.
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.
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.
10. The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 29.01.

# INDEMNIFICATION

## SDG&E’s Indemnification Obligations.

In addition to any other indemnification obligations SDG&E may have elsewhere in this Agreement, which are hereby incorporated in this Section 28.01, SDG&E releases, and shall indemnify, defend and hold harmless Seller, and Seller’s directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty 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 and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third-party), arising out of or in connection with any breach made by SDG&E of its representations and warranties in Section 24.01.

This indemnity applies notwithstanding Seller’s active or passive negligence. However, Seller will not be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

## Seller’s Indemnification Obligations.

In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 28.02, Seller releases, and shall indemnify, defend and hold harmless SDG&E, and SDG&E’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:

1. any breach made by Seller of its representations and warranties in Sections 24.01 and 24.02;
2. Seller’s failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 1.01(a) and Article Twelve;
3. Penalties assessed by FERC, NERC (through WECC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category against SDG&E;
4. injury or death to persons, including SDG&E employees, and physical damage to property, including SDG&E property, where the damage arises out of, is related to, or is in connection with, Seller’s construction, ownership or operation of the Project, or obligations or performance under this Agreement;
5. injury or death to any person or damage to any property, including the personnel or property of SDG&E, to the extent that SDG&E would have been protected had Seller complied with all of the provisions of Section 30.15; *provided*, the inclusion of this subsection (e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 30.15;
6. any breach by Seller of the covenants set forth in Sections 24.03 and 24.04;
7. the Project, or any equipment, software, applications or programs (or any portion of same) used in connection with the Project or the Project result in an infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party;
8. any material violation of any Applicable Law by Seller or its subcontractors; or
9. any (i) release of a Hazardous Material by Seller its EPC Contractor or any of Seller’s or its EPC Contractor’s subcontractors, (ii) enforcement or compliance proceeding relating to or in connection with any alleged, threatened or actual violation of any environmental law by Seller or its EPC Contractor or any of Seller’s or its EPC Contractor’s subcontractors, or (iii) action reasonably necessary to abate, investigate, remediate or prevent a violation or threatened violation of any environmental law by Seller or its EPC Contractor or any of Seller’s or its EPC Contractor’s subcontractors.

This indemnity applies notwithstanding SDG&E’s active or passive negligence. However, SDG&E will not be indemnified under Section 28.02(a) - (d) for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

## Indemnification Claims.

All claims for indemnification by a Party entitled to be indemnified under this Agreement (an “Indemnified Party”) by the other Party (the “Indemnitor”) will be asserted and resolved as follows:

1. If a claim or demand for which an Indemnified Party may claim indemnity is asserted against or sought to be collected from an Indemnified Party by a third party, the Indemnified Party shall as promptly as practicable give Notice to the Indemnitor; *provided*, failure to provide this Notice will relieve Indemnitor only to the extent that the failure actually prejudices Indemnitor.
2. Indemnitor will have the right to control the defense and settlement of any claims in a manner not adverse to Indemnified Party but cannot admit any liability or enter into any settlement without Indemnified Party’s approval.
3. Indemnified Party 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 Indemnitor does not assume control of the defense, Indemnitor will bear the expense of this counsel.

## Resource Adequacy.

Seller agrees to indemnify SDG&E for any monetary penalties or fines assessed against SDG&E by the CPUC or the CAISO or any other entity having jurisdiction, resulting from Seller’s willful or negligent failure to provide SDG&E with the full Contract Capacity for the Project for purposes of meeting SDG&E's RA Compliance Obligations. The Parties shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SDG&E be required to use or change its utilization of its owned or controlled assets or market positions to minimize the fines and penalties.

## Survival.

All indemnity rights shall survive the termination of this Agreement.

# CONFIDENTIALITY/REGULATORY DISCLOSURE

## Confidentiality Obligation.

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 29.02 and 29.03, each receiving Party shall, and shall cause its Representatives to, (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; *provided,* a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party’s obligations under this Agreement if, but only if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement are obligated to comply with the requirements of this Agreement and, in the case of Representatives of Seller engaged wholly or in part in the purchase and sale of electrical power or natural gas, only if such Representatives are *directly* engaged in performing Seller’s obligations under this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

## Permitted Disclosures.

1. SDG&E may disclose Confidential Information to the Independent Evaluator. SDG&E and the Independent Evaluator may disclose Confidential Information to duly authorized regulatory and governmental agencies or entities, including the FERC, CPUC and all divisions thereof, and the CAISO, SDG&E’s Procurement Review Group (the “PRG”), a group of non-market participants including members of the CPUC, and SDG&E’s Cost Allocation Mechanism Group (“CAM”), and other governmental agencies and consumer groups established by the CPUC in Decision 02-08-071 Neither SDG&E nor the Independent Evaluator shall have any liability whatsoever to Seller in the event of any unauthorized use or disclosure by a regulatory or governmental agency or entity including without limitation the FERC, the CPUC and all divisions thereof, the PRG, CAM or the CAISO of any Confidential Information or other information disclosed to any of them by SDG&E or the Independent Evaluator.
2. SDG&E and the Independent Evaluator may also disclose Confidential Information to any Governmental Authority or to any third party to the extent necessary to comply with any Applicable Laws, and any applicable regulation, decision, rule, subpoena or order of the CPUC, CEC, FERC, any administrative agency, legislative body or other tribunal (other than those entities set forth in Section 29.02(c)), any exchange, Control Area or CAISO rule, or any discovery or data request of a party to any proceeding pending before any of the foregoing.
3. The Parties may disclose Confidential Information to the extent necessary to comply with any subpoena or order of court or judicial entity having jurisdiction over the disclosing Party (other than those entities set forth in Section 29.02(b)), or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.
4. Buyer may disclose the Product or any applicable portion of the Product including any amounts of Flexible Capacity and Inflexible Capacity, under this Agreement to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable, and Seller may disclose the transfer of the Product and the applicable Contract Capacity and any amounts of Flexible Capacity and Inflexible Capacity for each day of each Showing Month to the SC of the Project 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 Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product to another party or the Product is to be provided to another party in accordance with Section 1.01(f), Buyer shall be permitted to disclose to the other party to such transaction all such information necessary to effect such transaction.

## Duty to Seek Protection.

1. In connection with requests or orders to produce Confidential Information protected by this Agreement in the circumstances provided in Section 29.02(c) (by deposition, interrogatories, requests for information or documents, subpoena, order or similar legal process) each Party (i) will promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement, and (ii) will, and will cause its Representatives to, cooperate fully with such other Party in seeking to limit or prevent such disclosure of such Confidential Information.
2. If a Party or its Representatives are, in the written opinion of its legal counsel, and notwithstanding compliance with Section 29.03(a) compelled to make disclosure in response to a requirement described in Section 29.03(a) or stand liable for contempt or suffer other penalty, the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which it is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

## Ownership and Return 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. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Article Twenty-Nine.

# MISCELLANEOUS

## 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 one Party seeks to amend any applicable wholesale power sales tariff during the term of this Agreement without the prior written consent of the other Party, such amendment will not in any way affect either Party’s obligations under the Agreement. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

## Notices.

Unless otherwise provided in this Agreement, any notice or request (“Notice”) shall be in writing to the address provided below and delivered by hand delivery, United States mail, electronic mail, overnight courier service, or facsimile. Notice by electronic mail, facsimile 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 or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after the postmarked date. Notice by United States mail shall be effective on the third (3rd) Business Day after it was sent. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 30.02.

If to SDG&E:

If to Seller: *[Seller]*

Address

Address Line 2

City, State Zip

Attn:

Facsimile No.:

Copy: *[Seller]*

Address Line 1

Address Line 2

City, State Zip

Attn:

Facsimile No.:

## 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 COUNTY of SAN DIEGO, California.

## Amendment.

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

## Assignment.

Neither Party shall assign, transfer, delegate, mortgage, hypothecate, pledge or encumber its rights, title or interest in this Agreement without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; *provided,* Seller may collaterally assign this Agreement in accordance with Article Fourteen.

## 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 relinquishment 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.

## 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 representations, warranties, covenants and rights and obligations with respect to audits, indemnification, payment and settlement, confidentiality, remedies, limitation of liabilities, posting of Performance Assurance, dispute resolution, and limitations on third party sales, shall so survive.

## Further Assurances.

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary 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 to carry out the terms of this Agreement.

## No Agency.

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

## 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 or any third party which acquires rights under this Agreement).

## 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 or to impose any partnership obligation or liability on either Party in anyway.

## 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.

## Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” and that they are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

## Mobile Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such 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 Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008).

Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

## Insurance Requirements

Throughout the Term and for such additional periods as may be specified below, Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified below, and such additional coverage as may be required by Applicable Law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best’s Insurance Rating of not less than A-:VII or better or equivalent. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller’s defense and indemnity obligations. Seller shall cooperate with the third party vendor hired by SDG&E to obtain certificates of insurance and to monitor compliance with these insurance requirements on SDG&E’s behalf.

1. Workers’ Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller’s employees;
2. Employer’s Liability Insurance with limits of not less than:
3. Bodily injury by accident – One Million dollars ($1,000,000) each accident
4. Bodily injury by disease – One Million dollars ($1,000,000) policy limit
5. Bodily injury by disease – One Million dollars ($1,000,000) each employee
6. Commercial General Liability Insurance (which, except with the prior written consent of SDG&E and subject to Sections 30.15(c)(i) and (ii) below, shall be written on an “occurrence,” not a “claims-made” basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be not less than Ten Million Dollars ($10,000,000), per occurrence and Twenty Million Dollars ($20,000,000) annual aggregate, exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions and no explosion, wildfire, collapse, or underground exclusions.

If Seller elects, with SDG&E’s written concurrence, to use a “claims made” form of Commercial General Liability Insurance, then the following additional requirements apply:

1. The retroactive date of the policy must be prior to the Effective Date; and
2. Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.
3. Commercial Automobile Liability Insurance covering bodily injury, death, and property damage (including loss of use thereof) with a combined single limit of not less than One Million dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement. Seller’s Automobile Liability 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. Pollution Liability Insurance, (which, except with the prior written consent of SDG&E and subject to Sections 30.15(e)(i) and (ii) below, shall be written on an “occurrence,” not a “claims-made” basis) with limits of not less than Ten Million Dollars ($10,000,000), per claim and in the annual aggregate, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

If Seller elects, with SDG&E’s written concurrence, to use a “claims made” form of Pollution Liability Insurance, then the following additional requirements apply:

1. The retroactive date of the policy must be prior to the Effective Date; and
2. Either the coverage must be maintained for a period of not less than Five (5) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than Five (5) years after this Agreement terminates.
3. Umbrella/Excess Liability Insurance, written on an “occurrence,” not a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, Pollution Liability Insurance, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than Two Hundred Million Dollars ($200,000,000), per occurrence and in the annual aggregate, and on a following-form basis. The insurance requirements of this Section 30.15 can be provided by any combination of Seller’s primary and excess liability policies.
4. Cyber Risk Liability and Technology Errors and Omissions Insurance. If applicable to the scope of work, Seller shall maintain cyber risk liability and technology errors and omissions insurance with a combined single limit of not less than Ten Million Dollars ($10,000,000) per occurrence. If the policy maintains a policy aggregate, such aggregate shall be twice the per occurrence limit. Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of services under this Agreement. Such cyber risk liability insurance shall include coverage of claims and losses with respect to 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 copyrights, trademarks, service marks and trade dress. No exclusions shall be listed within the policy for unencrypted or portable devices. Notwithstanding any other provision of this Agreement, Seller shall purchase and maintain extended reporting period coverage providing that claims first made and reported to the insurance company within two (2) years after termination of the Agreement or cancelation of the insurance policy (and without new policy having the same retroactive date as the effective date of this Agreement) will be deemed to have been made during the policy period. Policy or policies shall also explicitly include Subcontractors.
5. Professional Liability Insurance. Seller shall maintain professional liability policy or policies insuring against liability for errors and omissions covering the professional activities contemplated under this Agreement in an amount of Five Million Dollars ($5,000,000) per claim. If the policy maintains a policy aggregate, such aggregate shall be twice the per claim limit. Such insurance shall be kept in effect for three years after termination of this Agreement.
6. Aviation Insurance. If applicable to the scope of work, Seller shall procure and maintain aircraft liability insurance covering third party bodily injury and property damage exposure, including, but not limited to, passenger liability, property damage liability, and contractual liability insurance (with an express acknowledgement by the underwriters that the indemnification and hold harmless provisions of this Agreement are insured). Such insurance shall be in the amount of not less than Eight Million Dollars ($8,000,000) per passenger being transported at any one time (with no per passenger sub-limits); provided, however, that such insurance shall at no time be less than Fifteen Million Dollars ($15,000,000) combined single limit (CSL) per occurrence. There shall be no unmanned aerial vehicle exclusion. The aircraft liability insurance policy shall not exclude fire suppression costs.
7. Ocean Marine Cargo and Inland Transit Cargo Insurance. If applicable to the scope of work, Seller shall carry and maintain ocean marine cargo and inland transit cargo policy or policies, insuring against “all risks” of physical loss of or damage to pipe, equipment, materials, machinery, spares, supplies and other property intended to be incorporated to the project occurring during transportation (including loading and off-loading) thereof to the work site or its vicinity, or an ancillary site. Such coverage shall be in an amount equal to 110% of the invoice value plus prepaid or advanced freight plus customs and duty, any one consignment or shipment in transit. Goods in storage shall be valued at replacement cost on the date of loss. Coverage shall be extended to include Warehouse to Warehouse coverage, War Risks, and Strikes, Riots and Civil Commotion. Buyer shall be named as Additional Assured and Loss Payee as respects their interests
8. SDG&E as Additional Insured. The insurance required in Section 30.15 shall apply as primary insurance to, without a right of contribution from, any other insurance or self-insurance maintained by or afforded to SDG&E, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SDG&E, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability, Pollution Liability, Umbrella/Excess Liability, Cyber Risk Liability and Ocean Marine Cargo and Inland Transit Cargo insurance required above shall name SDG&E, its Parent company, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds by endorsement for liability arising out of Seller’s obligations under this Agreement.
9. Certificates of Insurance. On or before the Effective Date and thereafter during the Term, Seller shall furnish to SDG&E certificates of insurance including applicable endorsements, and renewal certificates of insurance and applicable endorsements 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 required under this Article. Seller shall not commence work until Seller has obtained all insurance required by this Article and has provided acceptable certificates of insurance. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide SDG&E with at least thirty (30) days’ prior written notice in the event of cancellation of coverage and ten (10) business days for non-payment of premium. SDG&E’s receipt of certificates that do not comply with the requirements stated herein, or Seller’s failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 30.15 and shall not constitute a waiver of any of the requirements in this Section 30.15.
10. Failure to Comply. If Seller fails to comply with any of the provisions of this Section 30.15, Seller, among other things and without restricting SDG&E’s remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required insurance under this Section 30.15 (except for Workers Compensation), Seller shall provide a current, full and complete defense to SDG&E, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
11. Seller’s Subcontractors. Seller shall require all other persons, firms and corporation engaged or employed by Seller in connection with the performance of the Scope of Work to carry and maintain coverages with limits not less than those required by this Article. Exceptions shall be identified to SDG&E for SDG&E’s approval or other direction. Seller shall incorporate insurance requirement by reference within any contract executed by Seller and its subcontractors, sub-subcontractors, suppliers, and agents and shall cause each subcontractor, sub-subcontractors, suppliers, and agent to comply with the terms of this Agreement. Seller shall obtain and verify accuracy in their entirety of certificates of insurance evidencing required coverage prior to permitting any of its subcontractors, sub-subcontractors, suppliers, and agents to perform Work under this Agreement or any Release. Seller shall furnish original certificates of insurance with additional insured endorsements from all of its subcontractors, sub-subcontractors, suppliers, and agents as evidence thereof as Company may reasonably request.

## Multiple Originals.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes. 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.

## 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

|  |  |  |
| --- | --- | --- |
| ***[SELLER’S NAME]*,**  *a [Seller’s jurisdiction of organization and type of organization]*. |  | **SAN DIEGO GAS & ELECTRIC COMPANY,**  a California corporation. |
| By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Name]*  *[Title]* |  | By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Name]*  *[Title]* |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**APPENDIX A**

**DEFINITIONS**

“ADS” has the meaning set forth in the Tariff.

“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” has the meaning set forth in the preamble.

“Air Pollution Control District” means a district as defined by Section 39025 of the California Health and Safety Code, Division 26, Air Resources.

“Ancillary Services” or “A/S” means any ancillary service as defined in the Tariff as it may be updated from time to time..

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project or the terms of this Agreement including, without limitation, the Tariff.

“Approval Date” has the meaning set forth in Section 2.02.

“Arbitrator” has the meaning set forth in Section 27.03(a).

“Availability Incentive Payments” has the meaning set forth in the Tariff.

“Availability Notice” has the meaning set forth in Section 20.01.

“Availability Standards” has the meaning set forth in the Tariff.

“Available Capacity” means, collectively, Available Charging Capacity, Available Discharging Capacity, and Available Storage Capacity.

“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 or 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.

“Bid” has the meaning set forth in the Tariff.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the U.S. Thanksgiving holiday, or a Federal Reserve Bank holiday.

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

“Buyer Dispatched Test” has the meaning set forth in Section 7.02(a).

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

“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, collectively, Charging Capacity, Discharging Capacity, and Storage Capacity.

“Capacity Availability” means, for each Settlement Interval during the Delivery Period, the lesser of the following for the Project:

1. the Available Storage Capacity; or
2. the Available Charging Capacity; or

In no event shall the Capacity Availability be less than zero (0) MW or greater than SU Contract Capacity.

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

“Charging Capacity” means the maximum dependable operating capability of any storage resource to charge electric energy into a storage device, and shall include, without limitation, Ancillary Services Capacity, and any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and charge energy.

“Charging Energy Costs” has the meaning set forth in Section 16.03.

“Charging Energy Requirements” means the electric energy requirements of the Project that is withdrawn from the SDG&E’s electrical system to be stored by the Project and discharged at a later time. Under no circumstances does Charging Energy Requirements include Station Use.

“Claiming Party” means the Party claiming a Force Majeure under Article Twenty-Three.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.01.

“Commercial Operation” means [INSERT FOR NON-STORAGE, including achieving at least 90% of Expected Contract Capacity] that the Project has (i) successfully completed the demonstration set forth in Appendix 7, (ii) has met the requirements of Appendix 7and (iii) SDG&E has accepted the test results.

“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, a load-serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the Tariff, or to any Governmental Authority having jurisdiction.

“Confidential Information” means any and all written or recorded or oral 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, including Dispatch Data, 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, and the terms and conditions and other facts with respect to this Agreement. Confidential Information 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, 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*, 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 that the information has been independently developed without a violation of this Agreement.

“Construction Period Security” has the meaning set forth in Section 13.02(b).

“Construction Report” has the meaning set forth in Section 6.01.

“Contract Capacity” means the aggregate Capacity of the Project. As of the Effective Date, the Contract Capacity shall equal the aggregate of the Contract Capacity for the Project as set forth in Appendix 1.01. Contract Capacity shall be adjusted to reflect the updated Contract Capacity achieved by the Project’s performance; *provided*, that in no event may the Contract Capacity exceed the aggregate Contract Capacity of the Project.

“Contract Capacity & Ancillary Services Tests” means the testing procedures, requirements, and protocols set forth in Appendix 7

“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. The second (2nd) Contract Year would be from January 1st through December 31st of the year immediately following the initial Contract Year. The final Contract Year will be January 1st of the last year during which the Delivery Period occurs, through the last day of the Delivery Period.

“Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

“Cost Allocation Mechanism Group” or “CAM” means the advisory group established by the CPUC in Decision 07-12-052.

“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. With respect to SDG&E, Costs shall be based on replacing the Product with product from new energy storage capacity with similar attributes, including with respect to credit towards SDG&E’s procurement requirements under the CPUC Decision 13-10-040.

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

“CPUC” means the California Public Utilities Commission or any successor thereto.

“CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load-serving entities to demonstrate compliance with the CPUC’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 unsecured, senior long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“Daily Delay Damages” means liquidated damages in the amount of the product of $[\_\_\_]/MW and the Contract Capacity of all of the Project 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.

“Defaulting Party” has the meaning set forth in Sections 3.01 and 3.02.

“Demand Reduction” means the amount of actual load reduction achieved by the Project in response to a Dispatch Notice.

“Demand Response Provider” or “DRP” has the meaning set forth in the Tariff.

“Delivery Period” has the meaning set forth in Section 2.04.

“Delivery Period Security” has the meaning set forth in Section 13.02(c).

“Development Period Security” has the meaning set forth in Section 13.02(a).

“Discharging Capacity” means the maximum dependable operating capability of the Project to discharge energy, and shall include, without limitation, Ancillary Services Capacity, and any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and discharge energy.

“Dispatch Data” means data, information or other material in any way related to any schedule, dispatch, charging, discharges or instruction of the Project, including any schedules, dispatches, Dispatch Notices, discharges, charges, settlement statements, Ancillary Services dispatches or awards, if applicable.

“Dispatch Notice” means the operating instruction, and any subsequent updates, given by SDG&E to Seller, directing the Project to discharge at a specified megawatt output or a dispatch given by the CAISO. Dispatch Notices may be communicated electronically (i.e. through ADS or e-mail), via facsimile, telephonically or other verbal means. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both SDG&E and Seller upon request for settlement purposes. For the avoidance of doubt, any Schedule, including self-schedules, submitted by SDG&E or awarded by the CAISO in order to effectuate a Seller Initiated Test shall not be considered a Dispatch Notice for the period that is the greater of (i) the number of hours required to complete the test, or (ii) the Project’s Minimum Run Time.

“Dispatch Notice Penalty” means $500 for each failure to comply in any respect with a Dispatch Notice from SDG&E.

“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.

“Disqualified Stock” means any capital stock that, by its terms (or by the term of any security instrument into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the last day of the Term.

“Distributed Control System” or “DCS” means the integrated automation system for monitoring and controlling the critical operation functions of a facility that perform tasks essential to the charge, discharge and storage of electricity.

“Early Termination Date” has the meaning set forth in Section 3.03.

“EFC” means the effective flexible capacity (in MWs) of the Project pursuant to the counting conventions set forth in the Resource Adequacy Rulings and Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“Effective Date” has the meaning set forth in the preamble.

“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 a 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.

“EPC Contract” means Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means the entity chosen by Seller to perform the engineering, procurement and construction activities for the Project.

“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” has the meaning set forth in Sections 3.01 and 3.02.

“Executive(s)” has the meaning set forth in Section 27.02(a).

“Existing Zone” has the meaning set forth in the Tariff.

“Existing Zone Generation Trading Hub” has the meaning set forth in the Tariff.

“Expected Contract Capacity” means the expected capability of the Project to deliver the Product as measured in kW for daily planning and operation purposes as set forth in Appendix 1.01.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month, the Product (in kW) for such day of such Showing Month, less any reductions to the amount of Product (in kW) that must be provided for such day as specified in Section 12.03.

“Expected Initial Delivery Date”is the date set forth in Section 2.03.

“Federal Funds Effective Rate” means the rate for that day opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“Final CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to SDG&E in its sole discretion, 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 SDG&E, in SDG&E’s sole discretion; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure energy storage resources under CPUC Decision 13-10-040.

“Fitch” means Fitch Ratings Ltd. or its successor.

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

“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 including but not limited to (but only to the extent that the following examples satisfy such definition): (a) acts of God such as droughts, floods, earthquakes, (b) adverse geological or underground conditions that could not have been discovered through a reasonably prudent geophysical site survey, (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, and embargoes, and (d) industry-wide or general (i.e. not directed specifically at or by the party claiming Force Majeure) strikes, lockouts or other labor disputes. Force Majeure shall not include (i) a failure of performance of any other entity, including any entity providing electric transmission service to the Project, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event, (ii) failure to timely apply for or obtain permits, or (iii) 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).

“Forced Outage” has the meaning set forth in the Tariff.

“Forward Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other.

If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party.

If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be Zero dollars ($0).

The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“GADS” means the Generating Availability Data System, or its successor.

“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 of the Agreement, determined in a commercially reasonable manner, as described below. SDG&E, Gains shall be based on replacing the Product with product from new energy storage capacity with similar attributes, including with respect to credit towards SDG&E’s procurement requirements under the CPUC Decision 13-10-040.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, 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, 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.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for this purpose in accordance with prudent industry practices.

“Generator Operator” means the entity that operates any generating unit(s) and performs the functions of supplying energy and interconnected operations services and the other functions of a generator operator as described in NERC’s Statement of Compliance Registry Criteria located on the NERC website.

“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, exchange or grid control operator having or asserting jurisdiction over a Party, the Project or this Agreement.

“Governmental Charges” has the meaning set forth in Section 15.01.

“Grid Control Center” means the location of the personnel responsible for operating the applicable transmission grid and/or coordinating same with the CAISO.

“Hazardous Material” means any substance, waste, or material which has been designated as hazardous or toxic by the United States Environmental Protection Agency, the federal Occupational Safety and Health Administration (“OSHA”), California OSHA, the California Environmental Protection Agency, the California Office of Environmental Health Hazard Assessment, the California Department of Toxic Substances Control, the California State Water Resources Control Board, or any other environmental agency now or subsequently authorized to regulate materials in the environment or workplace.

“IFRS” has the meaning set forth in Section 13.01.

“Indemnified Party” has the meaning set forth in Section 28.03.

“Indemnitor” has the meaning set forth in Section 28.03.

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048 “Industry Standards” has the meaning set forth in Section 8.01(a).

“Inflexible Capacity” means, with respect to any particular month of the Delivery Period, the number of MWs of Product which are not eligible to satisfy Flexible RAR. Inflexible Capacity is also known as ‘generic capacity’.

“Initial Commercial Operation Test” means, the testing procedures, requirements, and protocols set forth in Appendix 7.

“Initial Delivery Date” has the meaning set forth in Section 2.04.

“Initial Delivery Deadline” has the meaning set forth in Section 2.04(o).

“Initial Negotiation End Date” has the meaning set forth in Section 27.02(a).

“Interconnection Facilities” means all apparatus installed between the Project and the Point of Interconnection on the PTO’s system, other participating transmission owner’s system, or the CAISO Grid, to interconnect the Project to make the Product available to SDG&E and to charge and discharge the Project, including connection, Tie-Line, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the PTO’s electric system (or other participating transmission owner’s system to which the PTO’s electric system is connected, including the CAISO Grid) and SDG&E’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the PTO’s electric system or on other participating transmission owner’s system to which the PTO’s electric system is connected.

“Interconnection Queue Position” is the order of Seller’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.03(c).

“Interconnection Study” or “Interconnection Studies” means (a) any of the studies defined in the Tariff or any PTO’s tariff that reflect methodology and costs to interconnect the Project to the PTO’s electric grid, and (b) any of the studies performed by the PTO, retail electric service provider, or CAISO pursuant to Applicable Law that reflect the costs to interconnect, or establish service for, the Project for purposes of charging the Project with electric energy.

“Interest 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.

“JAMS” means Judicial Arbitration and Mediation Services, Inc.

“kW” means kilowatt or kilowatts.

“kWh” means kilowatt-hour or kilowatt-hours.

“Lender” means any and all financial institutions that provide to Seller any development, bridge, construction, permanent debt, tax equity, Performance Assurance, or other form of financing or refinancing, or other credit support, relating to the Project. “Letter of Credit” means an irrevocable, nontransferable standby letter of credit issued by a Qualified Institution, which letter of credit shall be substantially in the form of Appendix 13.02(b) and reasonably acceptable to SDG&E. All Letter of Credit costs shall be borne by Seller.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit fails to be a Qualified Institution; (b) the issuer of such Letter of Credit fails to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges 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; or (e) the issuer of such Letter of Credit becomes 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 Area” has the meaning set forth in the Tariff.

“Local RAR” means the local resource adequacy requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority 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.

“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 the termination of the Agreement, determined in a commercially reasonable manner, as described below. SDG&E, Losses shall be based on replacing the Product with product from new energy storage capacity with similar attributes, including with respect to credit towards SDG&E’s procurement requirements under the CPUC Decision 13-10-040.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, 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, 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.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally suitable for these purposes in accordance with prudent industry practices.

“Manager” has the meaning set forth in Section 27.02(a).

“Market Based Rate Authority” means authority granted by FERC to charge market-based rates for electrical power pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d.

“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)).

“Master File” has the meaning set forth in the Tariff.

“Maximum Charge” has the meaning set forth in Appendix 1.01.

“Maximum Discharge” has the meaning set forth in Appendix 1.01.

“Maximum Storage Level” means the MWh amount under “Maximum Storage Level” as set forth in Appendix 1.01.

“Milestone Schedule” means the completed schedule in the form of Appendix 6.01(A), setting forth Seller’s engineering, permitting, procurement, contract, financing, and construction milestones.

“Minimum Load” has the meaning set forth in Appendix 1.01.

“Monthly RA Capacity Payment” has the meaning set forth in Section 9.02(a).

“Monthly RA Capacity Price” means, for any Showing Month, the applicable price for such Showing Month as listed in Appendix 9.02.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“Must Offer Obligation” has the meaning set forth in the Tariff for the applicable Resource Adequacy Product.

“MW” means megawatt or megawatts.

“MWh” means megawatt-hour or megawatt-hours.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC/GADS Protocols” means the NERC Generating Availability Data System protocols, as may be updated from time to time.

“NERC Reliability Standards” means those reliability standards applicable to a generating or storage facility or to the Generator Owner or the Generator Operator with respect to the generating or storage facility, that are adopted by NERC and approved by the applicable regulatory authorities and available on the NERC website.

“Net Qualifying Capacity” or “NQC” means the Net Qualifying Capacity set by the CAISO for Project.

“New Resource” means that the Project (a) has a remaining design life of at least *[ # ]* years after the Initial Delivery Date as attested by an engineering assessment performed by a professional mechanical engineer (with experience acceptable to SDG&E in its sole discretion) licensed by the State of California and (b) was installed and first became operational after January 1, 2010 as provided in the CPUC Decision 13-10-040.

“Non-Availability Charges” has the meaning set forth in the Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 3.03.

“Non-SDG&E Dispatch” means a dispatch by Seller either (a) pursuant to a Seller Initiated Test or (b) as required by Applicable Laws.

“Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff

“Non-Spinning Reserve” has the meaning set forth in the Tariff.

“Notice” has the meaning set forth in Section 30.02.

“Obligation Month” has the meaning set forth in Section 11.01.

“Operating Day” means a day within the Delivery Period on which the Project operates.

“Operating Restrictions” means, subject to Section 20.04(b), limitations on SDG&E’s ability to schedule and use Capacity and Ancillary Services during the Delivery Period that are identified in Appendix 1.01.

“Outage” has the meaning set forth in the Tariff.

“Outage Management System” has the meaning set forth in Section 20.01.

“Outage Schedule” has the meaning set forth in Section 22.01.

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Load Agreement” or “PLA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” or “PTO” means any entity or entities responsible for the interconnection of the Project with a Control Area or transmitting the Energy on behalf of Seller from the Project to the Point of Interconnection.

“Party” or “Parties” has the meaning set in the preamble.

“PDR” has the meaning set forth in the Tariff

“Performance Assurance” means collateral, including Development Period Security, Construction Period Security, and Delivery Period Security in the form of cash, or Letter of Credit.

“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 limitations on any pollutant emissions levels, limitations on fuel combustion or heat input throughput, limitations on operational levels or operational time, limitations on any specified operating constraint, requirements for acquisition and provision of any Emission Reduction Credits or Marketable Emission Trading Credits; or any other operational restriction or specification related to compliance with any Applicable Laws.

“Planned Outage” has the meaning set forth in the tariff and Resource Adequacy Rulings as applicable to the Project, namely a planned outage for the routine repair or maintenance of the Project, or for the purposes of new construction work, and does not include any outage designated as forced or unplanned as defined by the CAISO or NERC/GADS Protocols.

“Point of Interconnection” has the meaning set forth in Section 1.03(b).

“Prevention Equipment” has the meaning set forth in Section 5.01(e).

“Procurement Review Group” or “PRG” has the meaning set forth in Section 29.02(a).

“Product” means (a) any and all [NOTE: include if bid: Capacity, Ancillary Services, Ancillary Service Capacity and ]Resource Adequacy Benefits, or any other benefits associated therewith, associated with the Project under the terms of this Agreement, and (b) during any other portion of the Delivery Period, all Resource Adequacy Benefits associated with the Project, provided that:

(i) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Resource Adequacy Benefits related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Agreement;

(ii) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Resource Adequacy Benefits related to Flexible RAR, or attributes of the Project related to Flexible RAR, that results in a decrease or increase in the amount of Resource Adequacy Benefits related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iii) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Project subsequently qualifies for a Local Capacity Area, the Product shall include all Resource Adequacy Benefits related to such Local Capacity Area; and

(iv) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Resource Adequacy Benefits related to Flexible RAR, or attributes of any PDR related to Flexible RAR whereby any PDR which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Resource Adequacy Benefits of the PDR related to Flexible RAR.

“Project” [NOTE: discuss with seller] means the PDR or RDRR along with Interconnection Facilities (owned by Seller or Seller’s Affiliate), Prevention Equipment, and Protective Apparatus together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the Project location(s), excluding the Site, land rights and interests in land and as more fully described in Appendix 1.03. *[SDG&E Comment: may require additional description in addition to Appendix 1.03]*

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreement or related agreement for the Project.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy storage facilities in the Western United States, similar to the Project, 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 or that should reasonably have been 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.

Prudent Electrical Practices 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 and Applicable Laws.

Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the needs of the Project;

(b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Project and Transmission Emergencies whether caused by events on or off the Site;

(c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Project, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the PTO’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy storage facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“Qualified Institution” means either (A) a commercial bank or financial institution (that is not an Affiliate of Seller) organized under the laws of the United States or a political subdivision thereof or (B) a U.S. branch office of a foreign bank, and, with respect to both entities identified in clause (A) and (B), (i) (a) 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 GAAP, IFRS, or Successor) of at least $1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS).

“RA Adjustment” has the meaning set forth in Section 10.01(c).

“RA Capacity Qualification Tests” means any and all tests, certifications or performance evaluations required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for the Project to obtain, maintain or update a Unit NQC and Unit EFC, including without limitation, testing for PMAX.

“RA Compliance Obligations” means the RAR, Local RAR and Flexible RAR.

“RA Replacement Capacity” has the meaning set forth in the Tariff.

“RAR” means the resource adequacy requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

“Ratings Agency” means any of S&P, Moody’s, and Fitch (collectively, the “Ratings Agencies”).

“RDRR” has the meaning set forth in the Tariff.

“Referral Date” has the meaning set forth in Section 27.02(a).

“Representatives” means the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents of a Party utilized in connection with this Agreement and, in the case of SDG&E, includes the Independent Evaluator.

“Required Permits” has the meaning set forth in Section 5.01(b).

“Required Permit Date” means the date set forth in Section 5.01(b).

“Resold Product” has the meaning set forth in Section 12.05.

“Resource Adequacy” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Benefits” means, with respect to any Project, any and all of the following, in each case which are attributed to or associated with the Project at any time throughout the Delivery Period:

* + - * 1. resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
        2. resource adequacy attributes or other locational attributes for the Project related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Project within the CAISO Control Area, that can be counted toward a Local RAR;
        3. flexible capacity resource adequacy attributes for the Project, including, without limitation, the amount of Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR; and
        4. other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any RA Compliance Obligations.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” 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, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or any employee of a Party designated by any of the foregoing.

“Retest” has the meaning set forth in Appendix 7.

“Revised Initial Delivery Date” has the meaning set forth in Section 2.05(a).

“Rule 32” means SDG&E’s Electric Tariff Rule 32 or its successor.

“Satellite Communications System” or “SCS” means a system provided to Seller by SDG&E at SDG&E’s cost for emergency voice communications between SDG&E and Seller’s operating staff for the Project.

“S&P” means Standard & Poor’s Financial Services LLC, or its successor.

“Schedule” means the action of SDG&E in submitting Bids to the CAISO and receiving all CAISO Markets results from the CAISO.

“Scheduled Energy” means, the Energy from the Project expected to be delivered during each Settlement Interval to the Energy Delivery Point pursuant to (a) the latest Dispatch Notice, or (b) any CAISO instructions.

“Scheduled Outage” has the meaning set forth in the Tariff.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article Nineteen.

“SDG&E” has the meaning set forth in the preamble.

“SEC” means the United States Securities and Exchange Commission.

“Security Interest” has the meaning set forth in Section 13.03.

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

“Shortfall Capacity” has the meaning set forth in Section 12.06.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Simple Interest” means the product of the following three factors: (a) dollar amount on which an interest payment is based; (b) Federal Funds Effective Rate; and (c) the number of days in the calculation period divided by 360.

“Site” means the real property on which the Project is, or will be located, as further described in Section 1.02(d) and Appendix 1.03. *[SDG&E Comment: may require additional description in addition to Appendix 1.03 (e.g., parcel map, legal description]*

“Site Certification” means the “California Energy Commission Power Facility and Site Certification” set forth in Section 5.01(b).

“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.

“SP15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the Tariff.

“Spinning Reserve” has the meaning set forth in the Tariff.

“Specified RA Replacement Capacity” has the meaning set forth in the Tariff.

“Start-Up” means the action of bringing the Project from shut down status to synchronization with the grid and the availability of unconditional release of the Project ready for ramping to the applicable Dispatch Notice. During [INSERT MONTHS.] the Delivery Period, a Start-Up can only result from a Dispatch Notice and is complete once all of the conditions in the preceding sentence are met.

“Station Use” means the electrical load of the Project’s auxiliary equipment that are necessary for operation of the Project as set forth in Section 1.02(c). The auxiliary equipment includes, but is not limited, to forced and induced draft fans, air conditioner systems, cooling towers, plant lighting, and control systems.

“Station Use Metering Equipment” means, for the Project, a CAISO-approved revenue quality meter or meters, CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy consumed by the Project for Station Use.

“Storage Capacity” means the maximum amount of energy that is capable of being stored in a storage device, and shall include, without limitation, any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store energy.

“Successor” has the meaning set forth in Section 13.01.

“Supply Plan” has the meaning set forth in the Tariff.

“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.

“Term” has the meaning set forth in Section 2.01.

“Termination Payment” has the meaning set forth in Section 3.04.

“Tie-Line” means the transmission or distribution line between the Energy Delivery Point and the Point of Interconnection as more fully described in Appendix 1.03(A).

“Trading Day” means the day in which Day-Ahead trading occurs in accordance with the WECC Prescheduling Calendar.

“Trading Hour” has the meaning set forth in the Tariff.

“Transmission Emergency” means:

(a) An actual or imminent condition or situation which jeopardizes the integrity of PTO’s electric system or the integrity of any other systems to which the PTO’s electric system is connected, as determined by the PTO in its reasonable discretion, or any condition so defined and declared by the CAISO; or

(b) An emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the PTO’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

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

“NQC” means the Net Qualifying Capacity set by the CAISO for the Project.

“WECC” means the Western Electricity Coordinating Council, or any successor thereto.

“WECC Prescheduling Calendar” has the meaning used on the WECC website at <http://www.wecc.biz>.

“Wholesale Distribution Access Tariff” or “WDAT” means the tariff through which open access transmission service and interconnection service are offered by SDG&E, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

“WMDVBE” means women, minority, and disabled veteran business enterprise, as more particularly set forth in CPUC General Order 156.

**APPENDIX 1.01**

**CAPACITY AND ANCILLARY SERVICES OPERATING RESTRICTIONS**

[NOTE TO BIDDERS: include only if bid]

**APPENDIX 1.02**

**DESCRIPTION OF THE PROJECT**

Excel Appendices

**APPENDIX 1.03**

**PROJECT AND SITE DESCRIPTION**

1. Project Description

*{SDG&E Comment: Seller* ***may*** *provide additional written description of the site beyond what is summarized in Appendix 1.02.}*

2. Site Plan Drawing

*{SDG&E Comment: Seller must provide a depiction of the Project and where it is located on the Site. Details shall include the Point of Interconnection, points of ingress and egress, adjacent roads, labels of the Project’s components and a legend if necessary}*

3. Site Legal Description

*{SDG&E Comment: Seller must provide a legal description of the site, including APN number.}*

4. Site Map

*{SDG&E Comment: Seller must provide a map of the area where the project is located. The map should indicate major highways and/or landmarks near the project as well as other roadways important to locate the site. The map should also include a latitude and longitude for the site.}*

**APPENDIX 6.01(A)**

**MILESTONE SCHEDULE**

– Project Schedule –

[NOTE: SELLER TO PROVIDE ALL COMPLETED CUSTOMER REGISTRATION APPLICATIONS AT LEAST THREE (3) MONTHS PRIOR TO THE INITIAL DELIVERY DATE]

Seller has provided dates for development, construction, commissioning, and testing of the Project, showing all significant elements and milestones, as applicable, such as permitting, procurement, financing, engineering, acceptance testing, Seller’s proposed Expected Initial Delivery Date, and proposed Delivery Period.

**APPENDIX 6.01(B)**

**CONSTRUCTION REPORT**

Monthly Project Progress Report

From the Effective Date and continuing until the Initial Delivery Date, Seller will provide a monthly Project Progress Report containing, at a minimum, the information listed below.

1. An executive summary;
2. Project bar chart schedule (including current status of all events);
3. Assessment of percent construction complete and percent change from immediately previous report;
4. Description of general work status (including short passages as applicable) on:

Engineering;

Procurement;

Permitting (include status of any required regulatory determinations for approval of Federal New Source Review permitting exemptions, expedited permitting processes, and status of acquisition of required ERCs and other emission credits in terms of impact on the Project’s permitting schedule, over-all Project schedule, and ability of Project to meet Expected Initial Delivery Date);

Major construction activities in the prior month;

Testing;

Electrical interconnection status; and

Any other required interconnections.

1. Forecast activities for next month; and
2. Potential issues affecting the Project.

Seller must notify SDG&E’s contract manager for the Agreement in writing of its receipt of any additional documents, which fall into the categories, listed (in a – f) below, and make such documents available to SDG&E within two (2) Business Days of such receipt:

All material written commitments regarding construction work at the Project that could impact completion schedule or Initial Delivery Date;

Executed work orders for construction of the Project;

Construction agreements;

Letters of intent;

Precedent agreements; and

Engineering assessments of the Project.

**APPENDIX 7**

**[NOTE: TO BE DISCUSSED]**

**APPENDIX 9.02**

**Monthly RA Capacity Price**

[NOTE TO BIDDER: Insert Pricing]

**APPENDIX 13.03(b)**

**LETTER OF CREDIT FORM**

[DATE]

To: San Diego Gas & Electric Company

555 W. Fifth Street

Mail Code: GT18A3

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 San Diego Gas & Electric Company (“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 Resource Adequacy 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

1. 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 Performance Assurance Security as set forth and defined in the Resource Adequacy Purchase Agreement between Beneficiary and Applicant dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $\_\_\_\_\_\_\_\_\_\_.”

or

1. 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 sixty (60) 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 20.01**

**AVAILABILITY NOTICE**

**Availability Notice**

Operating Day:

Station: Issued By:

Unit: Issued At:

Unit 100% Available No Restrictions:

Stored Energy Level:

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Hour Ending | Available Capacity to Discharge | Available Capacity to Charge | Minimum Output | AGC Available | AGC Min Limit | AGC Max Limit | Storage Capacity Available to Charge | Storage Capacity Available to Discharge | Comments |
|  | (MW) | (MW) | (MW) (non AGC) | YES/NO | (MW) | (MW) | (MWh) | (MWh) |  |
| 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 20.02**

**DISPATCH NOTICES**

**Dispatch Notice**

Operating Day:

Station: Issued By:

Unit: Issued At:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Hour Ending | Scheduled Energy | AGC Scheduled | Regulation Up | Regulation Down | Spinning Reserve | Non-Spinning Reserves | Comments |
|  | (MW) | YES/NO | (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:

### 

**APPENDIX 20.03**

**START-UP NOTICE**

Date

Station Issued By:

Unit Issued At:

Date and Time Start-Up Initiated for Project

Date and Time Applicable Generating Unit Synchronized

Date and Time Project Released for Dispatch

**APPENDIX 20.05**

**COMMUNICATIONS PROTOCOLS**

**Communication Protocols**

These Communication Protocols are subject to change and shall be modified as evolving market conditions and rules may require.

**1. Contacts and Authorized Representatives**

The “Contact Information” tables set forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. Notification provided under this Agreement shall be made to the applicable point of contact as set forth in the Contact Information Table. A Party may update its Contact Information by providing Notice to the other Party.

**2. Communication Protocols – General**

2.1 Intra-day Communication: All communications and notices between the Parties that occur intra-day and intra-hour for the applicable Operating Day including those regarding emergencies Dispatch Notices, Availability Notices, and notices to avoid imbalance penalties, uninstructed deviation charges/credits or any other CAISO charges, and **shall be provided electronically or telephonically as SDG&E directs** to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) \_\_\_\_\_\_\_\_\_\_\_, (2) \_\_\_\_\_\_\_\_\_\_\_, (3) \_\_\_\_\_\_\_\_\_\_\_. If to SDG&E, such notices and communications shall be provided to Real Time. **Each Party shall confirm all Intra-day Communication either electronically or via telephone as soon as practicable.**

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and SDG&E, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: SDG&E and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

2.4 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreement and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.5 Staffing: The 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 SDG&E**

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by SDG&E with timely Notice to Seller.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Contact** | **Primary Phone** | **Secondary Phone** | **Fax** | **Email** |
| Day-Ahead Trading |  |  |  |  |
| Day-Ahead Scheduling |  |  |  |  |
| Real Time |  |  |  |  |
| Settlements – Power |  |  |  |  |
| Contract Administration |  |  |  |  |
| Outage Scheduling |  |  |  |  |

**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 SDG&E.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Desk:** | **Contact:** | **Direct Phone:** | **Secondary Phones:** | **Fax** | **Email:** |
| Dispatch Desk (Day-Ahead) |  |  |  |  |  |
| Dispatch Desk (Real Time) |  |  |  |  |  |
| Outage Desk |  |  |  |  |  |
| Plant Manager |  |  |  |  |  |
| Contract Administration |  |  |  |  |  |
| Settlements |  |  |  |  |  |
| Operations Manager |  |  |  |  |  |
| Operations Supervisor |  |  |  |  |  |

**APPENDIX 21.03**

**DELIVERY OF DATA**

The following is a list of generic data points to be electronically exchanged between Seller and SDG&E in real time. SDG&E may add items to or delete items form this list at its reasonable discretion prior to the Initial Delivery Date.

|  |  |
| --- | --- |
| **Data Point** | **Point description** |
| DNP - XXX UnitX Breaker | UNIT BREAKER |
| DNP - XXX UnitX AGC CTRL AVAILABILITY ON/OFF | UNIT AVAILABLE for AUTOMATED CONTROL |
| DNP - ISO RIG Lost Communication | RIG COMMUNICATION HEALTH |
| DNP - XXX UnitX High Operating Limit | UNIT HIGH OPERATING LIMIT |
| DNP - XXX UnitX Low Operating Limit | UNIT LOW OPERATING LIMIT |
| DNP - XXX UnitX ISO AGC set point | SET POINT FROM ISO WHEN ON REGULATION |
| DNP - XXX UnitX Net MW (POD) | POINT OF DELIVERY MW |
| DNP - XXX UnitX Max Sustained Ramp Rate | MAXIMUM SUSTAINED RAMP RATE |
| DNP - XXX UnitX AGC model - ISO AGC | CONTROL MODE INSTRUCTION |
| DNP - XXX UnitX AGC model – SFM | CONTROL MODE INSTRUCTION |
| DNP - XXX UnitX AGC model – MAN | CONTROL MODE INSTRUCTION |
| DNP - XXX UnitX AGC model – OFF | CONTROL MODE INSTRUCTION |
| DNP - XXX UnitX Dispatch Energy Schedule | DISPATCH ENERGY TARGET |
| DNP - XXX UnitX Reg Up Awarded MW | REGULATION UP AWARD MW |
| DNP - XXX UnitX RegDownp Awarded MW | REGULATION DOWN AWARD MW |
| DNP - XXX UnitX Spin Awarded MW | SPIN AWARD MW |
| DNP - XXX UnitX Non-Spin Awarded MW | NON SPIN AWARD MW |
| DNP - XXX UnitX Set Point (MW) | SET POINT FROM SDG&E |
| DNP - XXX UnitX Ramp Rate (MW/M) | CALCULATED RAMP RATE FROM SDG&E |
| DNP – XXX UNITX Instantaneous Energy Storage Level | ENERGY STORAGE LEVEL |
| DNP – XXX UNITX Max Charge Energy | MAX CHARGE ENERGY |
| DNP – XXX UNITX Max Discharge Energy | MAX DISCHARGE ENERGY |
| DNP – XXX UnitX Energy Charge Ramp Rate MW/min | ENERGY CHARGE RAMP RATE MW/min |
| DNP – XXX UnitX Energy Discharge Ramp Rate MW/min | ENERGY DISCHARGE RAMP RATE MW/min |

**APPENDIX 22.01**

**PLANNED OUTAGE REPORT**

Actual Planned Outage Reports submitted under this Agreement should be provided in Excel.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| DATE OF UPDATE | |  | | |
| **RESOURCE NAME** | |  | | |
|  | | |  |  |
|  |  |  |  |  |
| **Planned Outages** |  |  |  |  |
| **Start Date** | **HE** | **End Date** | **HE** | **MW Available** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**EXHIBIT D**

**Form of Notice of Showing Month Supply Plan**

