**MASTER ALLOWANCE/OFFSET CREDIT PURCHASE AGREEMENT**

**Between**

**SAN DIEGO GAS & ELECTRIC COMPANY**

(as Party A or “Buyer” or “SDG&E”)

**and**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(as Party B or “Seller”)

**MASTER ALLOWANCE/OFFSET CREDIT PURCHASE AGREEMENT**

**TABLE OF CONTENTS**

Page

**ARTICLE 1: DEFINITIONS, INTERPRETATION AND TERM** 1

1.1. Definitions 1

1.2 Rules of Interpretation 7

1.3 Term 8

**ARTICLE 2: TRANSACTION TERMS** 8

2.1 Execution of Transactions 8

2.2 Governing Terms 8

**ARTICLE 3: DELIVERY OBLIGATIONS** 9

3.1 Parties’ Obligations 9

3.2 Holding Account 9

3.3 Transfer of Product 9

3.4 Delivery Obligations upon Adverse Legal Determination or Adverse Legal Challenge 9

3.5 Tracking System Failure 10

3.6 Failure to Deliver or Receive Product 11

**ARTICLE 4: BILLING AND PAYMENT** 11

4.1 Billing 11

4.2 Disputes and Adjustments of Invoices 12

4.3 Netting 12

4.4 Set-off 12

4.5 Payments 13

4.6 Clearing Transactions 13

**ARTICLE 5: TAXES AND ACCESS TO FINANCIAL INFORMATION** 13

5.1 Taxes 13

5.2 Access to Financial Information 13

**ARTICLE 6: CREDIT** 14

6.1 Credit Support Addendum 14

**ARTICLE 7: REPRESENTATIONS AND WARRANTIES** 14

7.1 Mutual Representations and Warranties 14

7.2 Seller Representations and Warranties 15

7.3 Survival 15

**ARTICLE 8: SELLER COVENANTS** 15

8.1 Ongoing Compliance 15

8.2 Cooperation and Maintenance of Records 15

**ARTICLE 9: EVENTS OF DEFAULT AND EARLY TERMINATION** 16

9.1 Event of Default 16

9.2 Seller Event of Default 16

9.3 Early Termination 16

9.4 Calculation of Settlement Amount 17

9.5 Notice of Payment of Termination Payment 17

9.6 Disputes with Respect to Termination Payment 17

9.7 Rights and Remedies are Cumulative 17

**ARTICLE 10: LIMITATION OF LIABILITY, INDEMNIFICATION AND AUDIT RIGHTS** 17

10.1 Limitation of Liability 17

10.2 Indemnification 18

10.3 Audit 18

**ARTICLE 11 CONFIDENTIALITY** 18

11.1 Confidential Information 18

**ARTICLE 12: GOVERNING LAW / WAIVER OF IMMUNITIES** 19

12.1 Governing Law 19

12.2 Waiver of Immunities 19

**ARTICLE 13: DISPUTE RESOLUTION** 19

13.1 Waiver of Right to Jury Trial 19

13.2 Intent of the Parties 19

13.3 Management Negotiations 19

13.4 Mediation; Arbitration 20

13.5 Settlement Discussions 20

**ARTICLE 14: NOTICES** 20

14.1 Process 20

**ARTICLE 15: MISCELLANEOUS** 21

15.1 Recordings 21

15.2 Safe Harbor 21

15.3 Further Assurances and Cooperation 22

15.4 Counterparts 22

15.5 Assignment 22

15.6 Amendment 22

15.7 Independent Parties; No Third Party Beneficiaries 22

15.8 Severability and Waiver of Provisions 22

15.9 Miscellaneous 22

**SIGNATURES** 23

**ADDENDUMS AND OTHER ATTACHMENTS TO THE MASTER ALLOWANCE/OFFSET CREDIT PURCHASE AGREEMENT:**

CREDIT SUPPORT ADDENDUM

Attachment I – Letter of Credit Form

Attachment II – Drawing Certificate

EXHIBIT A –Form of Offset Credit Confirmation

**MASTER ALLOWANCE/OFFSET CREDIT PURCHASE AGREEMENT**

This Master Allowance/Offset Credit Purchase Agreement (“Master Agreement”; collectively with the [Credit Support Addendum], all written attachments, addenda and supplements, and Confirmations the “Agreement”) is entered into as of the Execution Date by and between San Diego Gas & Electric Company, a California corporation (“SDG&E” or “Party A” or “Buyer”) and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a \_\_\_\_\_\_\_\_\_\_\_\_\_ (“Party B”); collectively with Party A the “Parties” and individually a “Party”, with reference to the following:

WHEREAS, the Parties desire to enter into one or more Transactions for the purchase or sale of Allowances or Offset Credits in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**ARTICLE 1**

**DEFINITIONS, INTERPRETATION AND TERM**

1.1. Definitions . Capitalized terms used but not defined in this Master Agreement or in the Cap-and-Trade Regulations are defined in the applicable Confirmation.

“AAA” means the American Arbitration Association, a judicial arbitration and mediation service.

“AB 32” means the California Global Warming Solutions Act of 2006.

“Adverse Legal Challenge” means (a) an Adverse Legal Determination reasonably expected in the opinion of Buyer to be the subject of an appeal or further process or (b) the filing or pendency of a legal action by a third party, which action Buyer reasonably determines could result in the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal ability of CARB to implement the Cap-and-Trade Regulations or that as a result of such restraint on CARB makes it impossible for either Party to fulfill its obligations to purchase, sell, or transfer Products hereunder, other than a sanction or penalty imposed for the failure to comply with AB 32.

“Adverse Legal Determination” means (a) an action by a Governmental Authority that renders the Tracking System or the Cap-and-Trade Regulations illegal, unconstitutional or unenforceable, including the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal effectiveness and implementation of the Tracking System or Cap-and-Trade Regulations such that either Party is unable to fulfill its obligations to purchase, sell or transfer Products pursuant hereto, (b) the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal ability of CARB to implement the Cap-and-Trade Regulations or that as a result of such restraint on CARB makes it impossible for either Party to fulfill its obligations to purchase, sell, or transfer Products hereunder, other than a sanction or penalty imposed for the failure to comply with AB 32, or (c) the California state legislature or U.S. Congress promulgates or enacts a law that repeals or otherwise amends AB 32 such that SDG&E is no longer obligated to comply with the Cap-and-Trade Regulations or CARB is unable to implement or enforce the Cap-and-Trade Regulations.

“Affected Transaction” means a Transaction (a) subject to an Adverse Legal Determination in accordance with Section 3.4(a); (b) subject to an Adverse Legal Challenge in accordance with Section 3.4(b); (c) subject to a Tracking System Failure in accordance with Section3.5; or (d) otherwise provided as such in accordance with a Confirmation.

“Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. 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.

“Allowance” means a California Greenhouse Gas Emissions Allowance or CA GHG Allowance as defined in the Cap-and-Trade Regulations, that qualifies as an Allowance as defined under the Cap-and-Trade Regulations, and excludes Offset Credits and Sector-Based Offset Credits.

“Arbitration” means a binding arbitration conducted by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA’s Commercial Arbitration Rules.

“Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Broker Quotes” means the price determined using the volume weighted average of the end of day Allowance prices for each Terminated Transaction from three (3) bona fide unaffiliated brokers selected in good faith by the Non-Defaulting Party (or SDG&E if calculating Agreement Exposure pursuant to the Credit Support Addendum), which brokers regularly publish and widely distribute price assessments for Allowances and who actively participate in the market for Allowances. For sake of certainty, Broker Quotes shall be for Allowances regardless of whether the Product under the Terminated Transaction was an Allowance or an Offset Credit.

“Business Day” means any day except a Saturday, Sunday, or a federally insured bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party by whom the Notice or payment or Delivery is to be received.

“Buyer” means the Party to a Transaction that is designated as such in the Confirmation and that is obligated to purchase and receive the Product.

“Cal EPA” means the California Environmental Protection Agency.

“Cap-and-Trade Regulations” means “California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms,” California Code of Regulations, Title 17, Subchapter 10 Climate Change, Article 5, Sections 95800, et seq., as amended, supplemented or replaced (in part) from time to time.

“CARB” means the California Air Resources Board, or successor entities with similar functions.

“CEC” means the California Energy Commission, or successor entities with similar functions.

“Commodity Exchange Act” means the federal Laws codified under 7 U.S.C. 1, et seq., as amended.

“Compliance Instrument” means either Allowance or Offset Credit, as specified under each Transaction, issued in accordance with the Cap-and-Trade Regulations.

“Confirmation” means the written documentation of a Transaction between the Parties executed pursuant to Section 2.1 in the form of Exhibit A or in such other form as mutually agreed by the Parties.

“Contract Price” means the “Contract Price (dollars per Offset Credit)” of Product under each specific Transaction.

“Costs” means 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 or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means, if applicable for a Transaction, a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to either Party, which to SDG&E’s satisfaction:

(a) approves the Transaction in its entirety, including payments to be made by SDG&E, subject to CPUC review of SDG&E’s administration of the Transaction; and

(b) finds that SDG&E’s entry into the Transaction is reasonable and that payments to be made by SDG&E thereunder are recoverable in rates.

“Credit Event” is defined in the Credit Support Addendum.

“Credit Rating” is defined in the Credit Support Addendum.

“Credit Support Addendum” means the Credit Support Addendum attached hereto.

“Defaulting Party” means the Party that is subject to an Event of Default.

“Delivered” or “Delivery” means the transfer from Seller to Buyer, or from parties designated by Seller and Buyer in the Confirmation, of the Quantity of the Product from Seller’s Holding Account into Buyer’s Holding Account in accordance with the Cap-and-Trade Regulations.

“Delivery Date” means the date specified in each Transaction for Delivery of the Product from Seller to Buyer.

“Delivery Term” means the time period specified in a Transaction for the delivery of Product from Seller to Buyer commencing with the first Delivery Date and ending with the last Delivery Date.

“Early Termination Date” is defined in Section 9.3.

“Event of Default,” as applicable to either Party is defined in Section 9.1, and as applicable to Seller is also defined in Section 9.2.

“Exchange” means (a) the IntercontinentalExchange, Inc. (“ICE”), or (b) any other exchange to which both Parties agree and such exchange is regulated pursuant to the Commodity Exchange Act and routinely transacts Allowances.

“Execution Date” means the latest signature date found on the signature page of this Master Agreement.

“Executive” is defined in Section 13.3.

“Executive Officer” is defined in the Cap-and-Trade Regulations.

“Gains” means the present value of the economic benefit, if any (exclusive of Costs), to a Party resulting under then-prevailing circumstances from the termination of its obligations with respect to the Terminated Transactions, determined in a commercially reasonable manner and in accordance with Section 9.4.

“GHG” or “Greenhouse Gas” is defined in the Cap-and-Trade Regulations.

“Governmental Authority” means any federal, state, local or municipal government department, commission, bureau, agency or instrumentality, or any judicial, regulatory, or administrative body, having jurisdiction as to the matter in question, and includes the Cal EPA, CARB, CEC and CPUC.

“Governmental Charges” is defined in Section 5.1.

“Guarantor” is defined in the Credit Support Addendum.

“Holding Account” means the holding account issued pursuant to the Cap-and-Trade Regulations to an entity upon registration with CARB or the appropriate Governmental Authority.

“Index” means (a) the index published by the IntercontinentalExchange, Inc. (“ICE”), or (b) any other index to which both Parties agree that routinely publishes market prices for Allowances.

“Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

“Invalidation Term” is defined in the Confirmation for each Offset Credit Transaction.

“Investment Grade” has the meaning set forth in the Credit Support Addendum.

“Law” means any applicable federal, provincial, state, local or municipal statute, law, treaty, rule, by-law, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including AB 32 and any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective during the Term (provided that all warranties and representations of the Parties are with respect to the Law as of the Execution Date, unless specifically provided otherwise); and any binding interpretation of the foregoing.

“Longstop Date” means a date not to exceed ninety (90) days following the date of the Adverse Legal Determination or Adverse Legal Challenge, or such other date as the Parties may mutually agree in writing.

“Losses” means the present value of the economic loss, if any (exclusive of Costs), to a Party resulting under then-prevailing circumstances from the termination of its obligations with respect to the Terminated Transactions, determined in a commercially reasonable manner and in accordance with Section 9.4.

“Market Price” means:

(a) for Allowances, the volume weighted average price of Allowances as such prices are published by an Index, as selected and compiled by Buyer for the thirty (30) days preceding the Early Termination Date or date on which the applicable Party failed to Deliver or receive Product under Section3.6(a) or Section 3.6(b), as applicable; provided however, if such Index prices are not available for at least seven (7) days during such thirty (30) day period or if the Index is no longer publishing prices for Allowances, then the calculating Party shall use the volume weighted average of the end of day settlement prices published by an Index. If there is no settlement price publication for the days required, then Participant shall use end of day Broker Quotes to determine the Market Price. If Broker Quotes are not available, then the price shall be calculated in a commercially reasonable manner; and

(b) for Offset Credits, the price applicable to Allowances as determined using the Market Price for Allowances less the Fixed Differential as defined and set forth in the Confirmation for the Offset Credits.

“Non-Defaulting Party” is the Party that is not the Defaulting Party.

“Notice” is defined in Article 14.

“Offset Credit” means ARB Offset Credit as defined in the Cap-and-Trade Regulations.

“Payment System Uncontrollable Forces” means an event or circumstance which prevents one Party from performing its payment obligations hereunder, which event or circumstance (a) was not anticipated, (b) is not within the reasonable control of, or the result of the negligence of, the Party claiming the Payment System Uncontrollable Forces, and (c) which such Party is unable to overcome or avoid by the exercise of due diligence.

“Performance Assurance” means all collateral that is provided by Party B to SDG&E, whether in the form of cash, Letters of Credit, or other security acceptable to SDG&E.

“Product” means either Allowance or Offset Credit, as specified under each Transaction, issued in accordance with the Cap-and-Trade Regulations.

“Quantity” means the aggregate quantity of Product to be Delivered by Seller to Buyer under a Transaction.

“Replacement Price” means the price for each Product under a Transaction at which Buyer, acting in a commercially reasonable manner, purchases Allowances to substitute or replace Product not Delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such substitute or replacement Products; or, at Buyer’s option, the Market Price for the Product not Delivered.

“Sales Price” means the price for each Product under a Transaction at which Seller, acting in a commercially reasonable manner, resells any Product not accepted by Buyer as required hereunder, deducting from such proceeds any costs reasonably incurred by Seller in reselling such unaccepted Product, or at Seller’s option, the Market Price for each Product not accepted by Buyer, as determined by Seller in a commercially reasonable manner.

“Sector-Based Offset Credit” is defined in the Cap-and-Trade Regulations.

“Seller” means the Party to a Transaction that is designated as such in the Confirmation and that is obligated to sell and Deliver the Product.

“Seller Failure” is defined in Section 3.6(a).

“Settlement Amount” means the sum of Losses, Gains, and Costs incurred by the Non-Defaulting Party as a result of termination of the Terminated Transactions calculated in accordance with Section 9.4. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, the Settlement Amount shall be zero.

“Term” is defined in Section 1.3.

“Terminated Transactions” is defined in Section 9.3.

“Termination Payment” means the sum of (a) the Settlement Amount and (b) the sum of all amounts due and owing by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

“Tracking System” means the Compliance Instrument Tracking System Service (CITSS) or the successor mechanism or third party resource required by CARB and any other Governmental Authority acting pursuant to AB 32 for accounts recording ownership of the Product and enabling transfer of the Product.

“Tracking System Failure” means a disruption in Delivery caused solely by the Tracking System that (a) is not specific to either Party’s Holding Account, (b) is not subject to Section3.4, and (c) is not within the control of, or the result of the negligence of, such Party and which could not have been avoided by the exercise of due diligence.

“Trade Date” means the date a Transaction is entered into by the Parties.

“Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of the Product pursuant to this Master Agreement, as documented by a Confirmation subject to Section 2.1 of this Master Agreement.

“Transaction Termination Date” means the date an Affected Transaction is terminated.

“Vintage Year” (a) with respect to Allowances is defined in the Cap-and-Trade Regulations and (b) with respect to Offset Credits means the year in which the GHG reduction or GHG removal enhancement of one metric ton of CO2e, as defined in the Cap-and-Trade Regulations, occurred or will occur; provided that if the Cap-and-Trade Regulations are amended to provide an express definition, such definition shall apply.

1.2 Rules of Interpretation .

(a) Headings are included for convenience only and are not to be considered in interpretation.

(b) References in the singular include references to the plural and vice versa, pronouns having masculine or feminine gender include the other, and words denoting natural persons include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities, whether or not having a separate legal personality. Other grammatical forms of defined words or phrases have corresponding meanings.

(c) “Include” or “including” means "including without limitation”.

(d) “Quarter” means, unless otherwise indicated, a three month calendar period beginning on the first day of January, April, July, or October of a given year; “month” means a calendar month unless otherwise indicated, and a “day” is a 24-hour period beginning at 12:00:01 AM and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends.

(e) Unless otherwise specified herein, where the consent of a Party is required, such consent may not be unreasonably withheld, conditioned or delayed.

(f) Unless otherwise specified herein, all references herein to any agreement or other document of any description include all amendments, supplements, modifications and any superseding agreement or documents, including any website, as existing at the applicable time.

(g) A reference to a particular article, section, exhibit, addendum or attachment is, unless specified otherwise, a reference to that article, section, exhibit, addendum or attachment to this Master Agreement. A reference to a particular paragraph is, unless otherwise specified, a reference to a paragraph of the Credit Support Addendum. A reference to a particular Special Provision is, unless otherwise specified, a reference to a Special Provision of a Confirmation.

(h) References to any natural person, Governmental Authority, publication, website, market price index, regulatory proceeding, corporation, partnership or other legal entity include successors and lawful assigns.

(i) All references to money or dollars are to U.S. dollars.

(j) An “order”, “determination”, “decision” or “interpretation” of the Cal EPA, CPUC, CARB or CEC includes a resolution, advice letter or other action embodying a final decision by it.

(k) “Or” is not necessarily exclusive.

(l) Examples are for purposes of illustration of the applicable concept only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text will govern.

(m) All references to hours are Pacific Standard Time or Pacific Daylight Time, as prevailing on the day in question.

(n) “Herein”, “hereunder” and similar terms refer to this Master Agreement in its entirety unless the context requires otherwise.

(o) Each term hereof is to be construed simply according to its fair meaning and not strictly for or against either Party. No term hereof is to be construed against a Party on the ground that the Party is the author or drafter of that provision. Each Party expressly agrees to not utilize in any dispute hereunder any rule of construction that resolves the interpretation of any provision against the drafting Party.

1.3 Term . This Master Agreement shall be effective as of the Execution Date and remain in effect until terminated by either Party upon thirty (30) days prior Notice; provided, however, that this Master Agreement shall remain in effect with respect to Transactions entered into prior to the effective date of termination until both Parties have fulfilled all of their obligations with respect thereto (the “Term”), and any termination shall not affect or excuse the performance of either Party under any provision hereof that by its terms survives termination.

**ARTICLE 2**

**TRANSACTION TERMS**

2.1 Execution of Transactions . A Transaction shall be entered into upon mutual written agreement of the Parties and shall be evidenced by a Confirmation executed in writing by both Parties.

2.2 Governing Terms . Each Transaction between the Parties shall be governed by the Agreement. This Master Agreement, written attachments, addenda and supplements, and Confirmations form a single integrated agreement between the Parties. In the event of a conflict between a provision in this Master Agreement and Credit Support Addendum and a provision of an applicable Confirmation, the provisions of the Master Agreement and Credit Support Addendum control except when the Confirmation (a) sets forth more specific commercial provisions regarding time, place and manner of performance, including price, quantity and procedural terms, or (b) amends specifically referenced Sections of the Master Agreement, in which case the terms of a Confirmation control with respect to that Confirmation.

**ARTICLE 3**

**DELIVERY OBLIGATIONS**

3.1 Parties’ Obligations . With respect to each Transaction, Seller shall sell and Deliver to Buyer and Buyer shall purchase and receive, the Quantity of the Product, and Buyer shall pay Seller the Contract Price with respect to the Product Delivered, all in accordance with the terms hereof. Seller shall, at its sole expense, take all actions and execute all documents and instruments necessary to ensure that all Product under each Transaction is properly registered, verified, Delivered, or capable of being Delivered, tracked, and otherwise qualified in all respects under the Cap-and-Trade Regulations as an Allowance or Offset Credit, as applicable.

3.2 Holding Account .

(a) Prior to the Delivery Date, Seller shall (i) register with the Executive Officer in accordance with the Cap-and-Trade Regulations, (ii) obtain Executive Officer approval of such registration, and (iii) obtain a Holding Account (“Seller’s Holding Account”) from and into which the Product may be transferred, which account Seller shall maintain until the end of the Delivery Term for all Transactions.

(b) Seller shall transfer the Product to the Holding Account designated by Buyer herein or by Notice (“Buyer’s Holding Account”). Each Party shall be responsible for its own expenses associated with establishing and maintaining its Holding Account. Seller shall be solely responsible for paying expenses associated with the issuance and transfer fees for the Product, and transferring the Product from Seller’s Holding Account to Buyer’s Holding Account. Promptly upon receiving confirmation that each Holding Account has been established, and at least ten (10) days prior to the Delivery Date, each Party shall provide the other with all details of such Holding Account.

3.3 Transfer of Product . Seller shall ensure that all Product is transferred to Buyer in accordance with the terms of the Transaction, for Buyer’s sole benefit. Delivery shall occur when the transfer of the Product into Buyer’s Holding Account is complete in accordance with the Cap-and-Trade Regulations, at which time title to the Product will transfer from Seller to Buyer. Without limiting Seller’s obligations under Section 3.1, each Party will provide to the other any reasonably requested information or documentation required to implement Delivery, cooperate to cause Delivery to occur, and comply with any and all applicable procedures and requirements of Law relating to the recording and transfer of the Product.

3.4 Delivery Obligations upon Adverse Legal Determination or Adverse Legal Challenge .

(a) Adverse Legal Determination.

(i) If, as of the Delivery Date, Seller is unable to Deliver Product due solely to an Adverse Legal Determination, or Buyer is unable to receive Product due solely to an Adverse Legal Determination, then Seller’s Delivery obligations, and Buyer’s obligations to purchase and receive, with respect to each Affected Transaction shall be postponed until the Longstop Date; provided that Buyer, at its sole option, has the right, but not the obligation, to purchase and receive such Product prior to the Longstop Date.

(ii) If Buyer elects to purchase and receive Product under an Affected Transaction prior to the Longstop Date, then Buyer shall designate a new Delivery Date prior to the Longstop Date and Seller shall Deliver the Product on the new Delivery Date in accordance with the terms of such Affected Transaction. Either Party may elect to terminate the Affected Transaction following the Longstop Date by providing Notice to the other Party to terminate only the Affected Transaction in accordance with Section 3.4(c) below.

(b) Adverse Legal Challenge.

(i) If, as of the Delivery Date, Buyer determines that its obligations under the Transaction are or may be prohibited due to an Adverse Legal Challenge, then Buyer shall Notify Seller of the Adverse Legal Challenge and explain the application to the Affected Transaction and the Delivery Date shall be extended to the Longstop Date, such that Buyer does not have an obligation to Receive the Product with respect to each Affected Transaction to the extent prevented by the Adverse Legal Determination.

(ii) If the Adverse Legal Challenge is terminated, lifted or ceases to apply prior to or on the Longstop Date, then the Parties shall resume performance on the Longstop Date or such earlier date as is mutually agreeable to the Parties. If the Adverse Legal Challenge is not terminated, not lifted, or no longer applicable as of the Longstop Date, then Buyer may elect to terminate only the Affected Transaction following the Longstop Date by providing Notice to Seller in accordance with Section 3.4(c) below.

(c) Following a Transaction Termination Date, Seller shall not Deliver and Buyer shall not receive or pay for Product remaining to be Delivered under the Affected Transaction. Termination of an Affected Transaction pursuant to this Section 3.4 does not forgive amounts payable or paid under Section 4.1 for Product Delivered or pursuant to Section 3.6 for Product not Delivered or received, but no damages or payment shall be due with respect to Product that would have been, but will no longer be, Delivered or received under the Affected Transactions.

(d) Notwithstanding the foregoing, if prior to the Notice of the Adverse Legal Determination or Adverse Legal Challenge with respect to a Transaction, a Party seeks to take action or declare an Event of Default against the other Party based on an actual or alleged violation of any applicable Law by the defaulting Party, then the defaulting Party may not benefit from this Section 3.4. The Parties further agree that Adverse Legal Determination or Adverse Legal Challenge with respect to each Affected Transaction shall not suspend or abrogate any other right of a Party to terminate any other Transaction or exercise a remedy hereunder not related to such Adverse Legal Determination or Adverse Legal Challenge, such as the right arising pursuant to an Event of Default.

3.5 Tracking System Failure .

(a) If a Party is unable to Deliver or receive Product due to a Tracking System Failure, the affected Party shall within two (2) Business Days provide the other Party with Notice and full details identifying the cause of the Tracking System Failure and the Affected Transactions. Seller shall use its best efforts to cause Delivery of the Product under the Affected Transactions and give effect to the original intention of the Parties.

(b) Seller’s Delivery obligations and Buyer’s obligations to receive Product under the Affected Transactions shall be postponed until the earlier to occur of (i) the ninetieth (90th) day following the day the Tracking System Failure began or (ii) the next Business Day following the day on which the Tracking System Failure is remedied as evidenced by notice from the administrator of the Tracking System or (iii) successful use of the Tracking System by another Tracking System user (the earliest being the “Delivery Deadline Date”); provided that until the Delivery Deadline Date, the Parties shall use good faith efforts each Business Day to affect the Delivery or receipt of Product. Following the Delivery Deadline Date, either Party may provide Notice to the other Party to terminate only the Affected Transactions.

(c) Neither Party’s failure to Deliver or receive Product due solely to a Tracking System Failure constitutes an Event of Default hereunder. If, as of the Delivery Deadline Date, the Parties have not agreed upon an alternate Delivery Date for the Product affected by the Tracking System Failure, then Seller shall be relieved from its obligation to Deliver the Product that would have been Delivered but for the Tracking System Failure, and Buyer shall not be obligated to pay for or later receive such Product. In no event shall Buyer be obligated to pay for Product that it does not receive. Termination of an Affected Transaction pursuant to this Section 3.5 does not forgive amounts payable or paid under Section 4.1 for Product Delivered or pursuant to Section 3.6 for Product not Delivered or received, but no damages or payment shall be due with respect to Product that would have been, but will no longer be, Delivered or received under the Affected Transactions.

3.6 Failure to Deliver or Receive Product .

(a) Seller Failure. If Seller fails to Deliver all or part of the Product pursuant to a Transaction, and such failure is not excused by Buyer’s failure to perform, Section 3.4, or Section 3.5 (any or all of which are considered a “Seller Failure”), then Seller shall pay Buyer, within fifteen (15) days of receiving the invoice, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for the Quantity not Delivered. The invoice shall include a written statement explaining Buyer’s calculation in reasonable detail. If there are further Delivery Dates under the Transaction, or any other Transactions, then Seller shall provide Buyer with adequate assurances of Seller’s ability to perform its obligations under the remaining Transaction or Transactions by (i) posting additional Performance Assurance pursuant to the Credit Support Addendum and (ii) providing additional documentation as reasonably requested by Buyer.

(b) Buyer Failure. If Buyer fails to receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, Section 3.4 or Section 3.5, then Buyer shall pay Seller, within fifteen (15) days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price for the Quantity not Delivered. The invoice shall include a written statement explaining the calculation in reasonable detail.

**ARTICLE 4**

**BILLING AND PAYMENT**

4.1 Billing .

(a) If the Parties agree to modified payment terms pursuant to the Credit Support Addendum, including any right of SDG&E to apply payments otherwise due to Seller to secure Seller’s collateral requirements as required from Seller as Party B, such terms shall take precedence over this Article Four.

(b) On or about the tenth (10th) day of each month following the month in which Seller Delivered Product to Buyer, Seller shall provide to Buyer an invoice, in the format specified by Buyer, for an amount equal to the (i) Contract Price multiplied by (ii) the Quantity of Product Delivered. Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25th) day of each month or fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party, as further specified in Section 4.5. Any amounts not paid when due, unless not paid to Seller due to Payment System Uncontrollable Forces, are delinquent and will accrue interest at the Interest Rate, calculated from and including the due date up to but excluding the date the delinquent amount is paid in full. In the event Payment System Uncontrollable Forces prevents payment to Seller, Buyer shall pay on the first Business Day following the resolution of the Payment System Uncontrollable Forces.

4.2 Disputes and Adjustments of Invoices . If an invoice or portion thereof or any other claim or adjustment arising hereunder is disputed in good faith, payment of the undisputed portion of the invoice must be made when due, with Notice of the objection given to the other Party stating the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved; provided, however, that if the disputing Party’s Credit Rating is below Investment Grade, it must transfer Performance Assurance to the other Party in an amount equal to the amount in dispute. The Parties shall use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date up to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment up to but excluding the date repaid or deducted by the Party receiving such overpayment. If an invoice is not rendered by Seller within twelve (12) months after the close of the applicable Delivery Date the right to payment for such performance is waived.

4.3 Netting . To the maximum extent permitted by Law, if an Event of Default has not occurred and is not continuing, and if the Parties are required to pay an amount on the same day each to the other hereunder, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed.

4.4 Set-off . In addition to any rights of set-off a Party may have under Law or otherwise, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but not the obligation) without prior Notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party arising hereunder (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in good faith, and exercising commercially reasonable judgment, estimate that obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other Party when the obligation is ascertained. Except as provided in the Credit Support Addendum, nothing herein will have the effect of creating a charge, pledge, lien or other security interest.

4.5 Payments . All funds paid hereunder shall be rendered in the form of immediately available dollars. Payment, as applicable, shall be made by Automated Clearing House (ACH) or in other form reasonably requested, to the following accounts:

Party A:

Bank: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For Credit to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ABA No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Account No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Party B:

Bank: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For Credit to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ABA No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Account No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4.6 Clearing Transactions . The Parties may by mutual consent in their sole discretion elect to clear or allow a designated third party to clear on its own behalf any Transactions with a third party Exchange, broker or other mechanism in lieu of direct transfer from Seller to Buyer’s Holding Account as contemplated herein.

**ARTICLE 5**

**TAXES AND ACCESS TO FINANCIAL INFORMATION**

5.1 Taxes . Seller shall pay all taxes imposed by any Governmental Authority (“Governmental Charges”) with respect to Products transferred in a Transaction that arise before Buyer receives such Products in Buyer’s Holding Account. Buyer shall pay all Governmental Charges with respect to Products transferred in a Transaction from and after Buyer receives such Products in Buyer’s Holding Account. Taxes in the form of ad valorem taxes, franchise taxes and income taxes (and any similar taxes imposed on the Parties based upon participation in the Tracking System or income derived from trading Products) shall be borne by each Party with regard to its respective income obligations.

5.2 [Access to Financial Information . [NOTE: SDG&E to insert consolidation language if required.]

**ARTICLE 6**

**CREDIT**

6.1 Credit Support Addendum . The credit and collateral provisions are set forth in the Credit Support Addendum.

**ARTICLE 7**

**REPRESENTATIONS AND WARRANTIES**

7.1 Mutual Representations and Warranties . Each Party hereby represents and warrants to the other Party as of the Execution Date, and with respect to each Transaction as of the Trade Date and Delivery Date, that:

(a) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization or incorporation;

(b) it has the corporate, governmental, regulatory, and other legal capacity, and power to execute and deliver this Agreement, and to perform its obligations hereunder;

(c) the execution, delivery, and performance of this Agreement has been authorized by all necessary action on its part, including obtaining all authorizations or approvals from Governmental Authorities pursuant to all Laws, and will not result in any breach of or default under any term or provision of any other agreement, instrument, judgment, decree, order, statute, rule or governmental regulation to which it is otherwise a party or by which it may be bound;

(d) there is not pending, or to its knowledge threatened, against it, any action, suit or proceeding at law or in equity before any court, governmental body, agency, or any arbitrator that is likely to materially adversely affect its ability to perform its obligations hereunder;

(e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by bankruptcy or any law affecting the enforcement of creditors’ rights generally and subject to equitable principles of general application;

(f) it is an “Eligible Contract Participant” as defined in Section 1a(18) of the Commodity Exchange Act;

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement and each Transaction and as to whether or not this Agreement and each Transaction 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, is capable of assessing the merits of this Agreement and each Transaction, and understands and accepts the terms, conditions, and risks of this Agreement and each Transaction; and

(h) no Event of Default with respect to itself has occurred or is continuing.

7.2 Seller Representations and Warranties . Seller represents and warrants to Buyer as of the Execution Date and upon each Delivery Date for Products for each Transaction that the following are true and correct:

(a) Seller has the right to sell and has and shall convey good and marketable title to the Product to Buyer free and clear of any liens, taxes, claims, security interests or other encumbrances or title defects;

(b) Seller is the sole legal and beneficial owner of the Product to be Delivered;

(c) the Product Delivered is of the Vintage Year claimed by Seller;

(d) the Invalidation Term of the Product Delivered is consistent with the Invalidation Term claimed by Seller;

(e) Seller has not sold the Product or any part or attribute thereof to any other person or entity other than Buyer;

(f) Buyer has the exclusive rights to make all claims, of ownership, use, or control, respecting the Product upon its Delivery by Seller; and

(g) the Product, and Delivery and transfer of the Product comply with all Cap-and-Trade Regulations.

7.3 Survival . The Parties’ liabilities to one another for the breach of the representations in this Article 7 shall survive any termination or expiration hereof.

**ARTICLE 8**

**SELLER COVENANTS**

8.1 Ongoing Compliance . Seller covenants that it shall comply with all Laws and, if applicable, the Compliance Offset Protocol (as defined in the Cap-and-Trade Regulations), to ensure that the Product and the transfer of Product hereunder comply therewith and with all Cap-and-Trade Regulations.

8.2 Cooperation and Maintenance of Records . Seller covenants to each of the following:

(a) Seller shall cooperate fully with Buyer to enable Buyer to meet Buyer’s obligations to CARB and any other Governmental Authority, which obligations are dependent in whole or in part upon Buyer’s receipt of assurances or documents from Seller and any third party with which Seller has contracted to produce or procure Product;

(b) Upon Buyer’s request, Seller shall provide copies of its documentation and records including all documents that Buyer is required to maintain or may be required to provide to CARB in accordance with the Cap-and-Trade Regulations. Seller shall maintain adequate records to assist Buyer or CARB in meeting any present or future reporting, verification, transfer, registration, or retirement requirements associated with the Product;

(c) Seller shall provide Buyer any application, report or other document it files with the CARB or any Governmental Authority relating to the Product, as soon as practicable after filing such documents and in the format and manner reasonably requested by Buyer; and

(d) For Transactions under which Seller is providing Offset Credits as the Product, Seller shall maintain all records for such Offset Credits, for the longer of the Invalidation Term or as required to settle or resolve any pending dispute.

**ARTICLE 9**

**EVENTS OF DEFAULT AND EARLY TERMINATION**

9.1 Event of Default . Each of the following is an “Event of Default” with respect to a Party (such Party is the “Defaulting Party”):

(a) a Party fails to make when due any payment required hereunder, if such failure is not remedied within ten (10) Business Days after Notice of such failure given by the other Party;

(b) any representation, warranty, or covenant made herein by a Party is not true and complete in any material respect, if such failure is not remedied within five (5) Business Days after Notice of such failure is given by the other Party;

(c) a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party hereunder by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(d) a Party or its Guarantor becomes Bankrupt; or

(e) a Party fails to perform any significant or material covenant in this Agreement not set forth in this Section 9.1 or Section 9.2, if such failure is not remedied within thirty (30) days after Notice of such failure is given by the other Party.

9.2 Seller Event of Default . Each of the following is also an “Event of Default” with respect to Seller, with Seller being the “Defaulting Party”:

(a) a Credit Event occurs with respect to Seller or Seller’s Guarantor; or

(b) more than one Seller Failure.

9.3 Early Termination . If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party has the right, in its sole discretion, to do any one or more of the following: (a) designate a day, no earlier than the day such Notice is given and no later than twenty (20) days after such Notice is given, as an early termination date (the “Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all Transactions (the “Terminated Transactions”); (b) withhold any payments due to the Defaulting Party hereunder; (c) apply any Performance Assurance to the obligations of the Defaulting Party, which shall not waive any deficiency claim or further rights and remedies; and (d) otherwise suspend its performance hereunder.

9.4 Calculation of Settlement Amount . If the Non-Defaulting Party designates an Early Termination Date, then the Non-Defaulting Party shall calculate the Termination Payment and the Settlement Amount, in a commercially reasonable manner. Gains and Losses for each Terminated Transaction shall be based upon the difference between the Contract Price of the remainder of the quantity of Product for the remainder of the Delivery Term, and the Market Price for the quantity of such Product; provided that for each Terminated Transaction for which Market Price cannot be determined or would not, in the reasonable belief of the Non-Defaulting Party, produce a commercially reasonable result, the Settlement Amount shall be an amount the Non-Defaulting Party reasonably determines in good faith to be its total Gains and Losses, including any loss of a bargain, with reference to such sources of information as reasonably determined appropriate by the Non-Defaulting Party, including firm or indicative quotations for replacement transactions from one or more third parties; relevant prevailing commercial term and credit support conditions; market data; and internal sources used in the regular course of business. In all cases the Gains and Losses shall be based upon replacement transactions (a) for the remaining quantity of Product not yet Delivered, (b) for Allowances with the same Vintage Year, and (c) for the remainder of the applicable Delivery Term. The Non-Defaulting Party shall not be required to enter into a replacement transaction or arrangement in order to determine Gains or Losses.

9.5 Notice of Payment of Termination Payment . As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

9.6 Disputes With Respect to Termination Payment . If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 13.

9.7 Rights And Remedies Are Cumulative . The rights and remedies of a Party pursuant to this Article 9 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**ARTICLE 10**

**LIMITATION OF LIABILITY, INDEMNIFICATION AND AUDIT RIGHTS**

10.1 Limitation of Liability . THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED FOR HEREIN ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSE HEREOF, AND EACH PARTY SHALL USE COMMERCIALLY REASONABLE EFFORTS TO MITIGATE ANY DAMAGES INCURRED. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS MEASURE OF DAMAGES IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT, OR CONTRACT, EXCEPT TO THE EXTENT THAT ANY PAYMENTS REQUIRED TO BE MADE PURSUANT HERETO ARE DEEMED TO BE SUCH DAMAGES. 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 LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10.2 Indemnification . Party B agrees to fully indemnify, defend and hold harmless SDG&E and its parent company, and the directors, officers, agents, employees, successors and assigns of each of them (“Indemnitees”) from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, suits, and expenses (including attorneys’ fees and court costs) directly or indirectly arising out of, resulting from or related to claims for, or in any way connected with: (a) any personal injury, including death, property damage, or theft caused to any Indemnitees or any third party by Seller’s action or inaction, whether by negligence or intentional misconduct, arising out of the performance of this Agreement, (b) Seller’s breach of any representations, warranties or covenants contained herein (c) Seller’s violation of or non-compliance under any Law; (d) the Product Delivered to Buyer hereunder; and (e) with respect to Transactions for Offset Credits, Seller's construction, operation or maintenance of an Offset Project, as defined in the applicable Confirmations. The obligations under this Section shall survive expiration or termination of each Transaction for a period of two (2) years.

10.3 Audit . In addition to Seller’s obligations under Section 8.2, Buyer has the right, at its sole expense and during normal working hours, to examine Seller’s records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant hereto. If requested, Seller shall provide to Buyer documentation evidencing the quantity of Product Delivered under each Transaction or such other documentation to ensure that Seller has complied with the terms of the Transaction.

**ARTICLE 11**

**CONFIDENTIALITY**

11.1 Confidential Information . Neither Party may disclose the non-public terms or conditions hereof to a third party other than (a) to the Party’s Affiliates, the Party’s or its Affiliates’ respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed in writing to keep such terms confidential, (b) Buyer’s Procurement Review Group, as defined in CPUC Decision D. 02-08-071 and Independent Evaluators as required by the CPUC in Decision D.07-12-052, subject to a confidentiality agreement, (c) to the Cal EPA, CARB, CEC, or CPUC under seal for purposes of review or advice, (d) in order to comply with any Law or any rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”) or applicable regulation, rule, or order of the Cal EPA, CARB, CPUC, CEC, or FERC (“Disclosure Order”). In connection with requests made pursuant to clause (d) of this Section, each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (x) prohibited from complying with a Disclosure Order or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The obligations under this Section shall survive termination or expiration of each Transaction for a period of three (3) years.

**ARTICLE 12**

**GOVERNING LAW / WAIVER OF IMMUNITIES**

12.1 Governing Law . THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

12.2 Waiver of Immunities . Each Party irrevocably waives, to the fullest extent permitted by Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Law, that it will not claim any such immunity in any proceedings before any court or Governmental Authority.

**ARTICLE 13**

**DISPUTE RESOLUTION**

13.1 Waiver of Right to Jury Trial . TO THE FULLEST EXTENT ENFORCEABLE, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

13.2 Intent of the Parties . Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating hereto or any related agreement is the dispute resolution procedure set forth in this Article. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of this procedure.

13.3 Management Negotiations . The Parties must attempt in good faith to resolve any dispute, controversy or claim arising out of or relating hereto or any related agreements by prompt negotiations between each Party’s designated representative, or such other person designated in writing as a representative of such Party (each a “Manager”). Each Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party’s receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting (“Initial Negotiation End Date”), the Managers shall refer the matter to the designated senior officers of their respective companies (each an “Executive”), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date (“Referral Date”), each Party shall provide the other Notice confirming the referral and identifying the name and title of the Executive designated to represent the Party. Within five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) 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. All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties. If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request refuses or does not meet within the ten (10) Business Day period specified, either Party may initiate mediation of the controversy or claim according to the terms of Section 13.4.

13.4 Mediation; Arbitration . If the dispute cannot be so resolved by negotiation as set forth above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties shall mediate any controversy before a mediator from the AAA panel, pursuant to AAA’s commercial mediation rules, in San Diego, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration, which either Party may initiate by filing with the AAA a Notice of intent to arbitrate. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediators and arbitrators 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.

13.5 Settlement Discussions . No statements of position or offers of settlement made in the course of the dispute process described in this Article may be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

**ARTICLE 14**

**NOTICES**

14.1 Process . Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified herein. Notices may be provided by courier, nationally-recognized overnight mail, facsimile or e-mail; provided that notice of an Event of Default or Early Termination Date shall be provided by courier or overnight mail. Notices shall be deemed given when received during normal business hours during a Business Day; otherwise the notice or communication is deemed given when received at the beginning of the next Business Day. The address of a Party to which Notice shall be given may be changed from time to time by Notice. This Section shall survive any termination or expiration hereof.

|  |  |
| --- | --- |
| If to Party A: |  |
|  | **With a copy of any Notice of an Event of Default to:** |
| Attn: Credit Manager | Attn: |
| Fax: (213) 244-8316 | Fax: |
|  |  |
| **Other Contacts**: |  |
| **Credit and Collections Contact**: | I**nvoices Contact**: |
| Attn: Credit Department | Attn: |
| Phone: Toll Free (866) 313-6622 | Phone: |
| Fax: (213) 244-8316 | Fax: |

|  |  |
| --- | --- |
| If to Party B: |  |
|  | **With a copy of any Notice of an Event of Default to:** |
| Attn: | Attn: |
| Fax: | Fax: |
|  |  |
| **Credit and Collections Contact**: | I**nvoices Contact**: |
| Attn: Credit Department | Attn: |
| Phone: | Phone: |
| Fax: | Fax: |

**ARTICLE 15**

**MISCELLANEOUS**

15.1 Recordings . Each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between individuals purporting to represent the Parties and that any such Recordings may be submitted in evidence in any proceeding or action relating hereto. Each Party waives any further notice of such monitoring or recording.

15.2 Safe Harbor . The Parties acknowledge, agree, and intend for purposes of “safe harbor” under the United States Bankruptcy Code (the “Bankruptcy Code”) that, without limitation, as applicable: (a) all Transactions constitute “forward contracts,” “forward agreements,” “emissions forward contract,” or “spot…forward…or other commodity agreement,” within the meaning of Bankruptcy Code Sections 101(25), 101(53B)(A)(i)(VII), 101(53B)(A)(i)(IX), or 101(53B)(A)(i)(II), respectively; (b) all payments made or to be made by one Party to the other Party hereunder with respect to forward contracts constitute “settlement payments,” “margin payments,” or “transfers” within the meaning of the Bankruptcy Code; (c) all transfers of Performance Assurance by one Party to the other Party hereunder constitute “margin payments” within the meaning of the Bankruptcy Code; (d) without limitation, each Party’s rights hereunder constitute a contractual right “to liquidate, terminate, or accelerate” within the meaning of the Bankruptcy Code; (e) this Agreement constitutes a “master netting agreement” and each Party is a “master netting agreement participant” within the meaning of the Bankruptcy Code; and (f) each Party is a “forward contract merchant” within the meaning of the Bankruptcy Code.

15.3 Further Assurances and Cooperation . In addition to Seller’s covenants set forth in Section 8.2, each Party agrees to execute and deliver to the other Party such other instruments, documents, and statements, and to take all other commercially reasonable actions to carry out the purposes hereof.

15.4 Counterparts . The Parties may execute this Agreement in one or more counterparts, including by facsimile transmission or electronic exchange of .pdf signature pages, each of which shall be an original, but all of which shall together constitute one instrument.

15.5 Assignment . Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion.

15.6 Amendment . This Master Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by the Parties, including, with respect to a particular Transaction, a Confirmation that states it is amending this Master Agreement as provided in Section 2.2.

15.7 Independent Parties; No Third Party Beneficiaries . Nothing herein creates an agency, partnership, employer-employee relationship or corporate association between the Parties. There are no third party beneficiaries hereto and this Agreement does not confer any rights or remedies upon any person or entity not a Party hereto.

15.8 Severability and Waiver of Provisions . Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder hereof. No waiver of any term, provision, or conditions hereof, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

15.9 Miscellaneous . Each Party represents that it has completely read, fully understands, and voluntarily accepts every provision hereof and has had the opportunity to engage counsel to assist in such review.

**SIGNATURES**

**Agreement Execution**

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

|  |  |  |  |
| --- | --- | --- | --- |
| **PARTY A** | | **PARTY B** | |
| SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation | | **[**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a **(*include place of formation and business type*)]** | |
| Signature: |  | Signature: |  |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
| Date: |  | Date: |  |

**CREDIT SUPPORT ADDENDUM to**

**MASTER ALLOWANCE/OFFSET CREDIT PURCHASE AGREEMENT**

1. Credit Terms. Capitalized terms used in this Credit Support Addendum and not defined in the Master Agreement are defined in Paragraph 10 below. Party B’s Guarantor is \_\_\_\_\_\_\_\_\_\_\_ ***[insert name of entity and place of formation/incorporation]***.

2. Thresholds.

(a) Threshold for Party B. “Threshold” means with respect to Party B, on any date of determination, the lowest of (i) the amount of any limit contained in a guaranty provided by Party B’s Guarantor, if applicable; ***[or]*** (ii) zero if a Material Adverse Change or an Event of Default has occurred and is continuing with respect to either Party B or its Guarantor **[**; or **[**(iii) \_\_\_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_\_\_\_\_)**]**. ***[Fill in and delete (iii) below, or delete and fill in (iii) below.]***

***[OR]***

**[**(iii) the amount set forth in the following table based on the lowest applicable Credit Rating for Party B or its Guarantor, as applicable.**]**

|  |  |  |
| --- | --- | --- |
| **Party B’s or its Guarantor’s Credit Rating** | | **Threshold** |
| **Moody’s** | **S&P** |
| Baa1 or above | BBB+ or above | $ \_\_\_\_\_\_\_\_\_\_\_.\_\_ |
| Baa2 | BBB | $ \_\_\_\_\_\_\_\_\_\_\_.\_\_ |
| Baa3 | BBB- | $ \_\_\_\_\_\_\_\_\_\_\_.\_\_ |
| Baa3(Credit Watch) | BBB-(Credit Watch) | $0.00 |
| Below Baa3 | Below BBB- | $0.00 |

***[if unrated Party B or unrated Guarantor use the following MAC]***

**[**(b) Material Adverse Change. “Material Adverse Change” means (i) SDG&E in its reasonable opinion has determined that (A) a material adverse change has occurred in the business, financial condition or operations of Party B or its Guarantor, as applicable; or (B) the ability of Party B or its Guarantor, as applicable, to meet its obligations under the Master Agreement or a guaranty provided hereunder has become materially impaired; or (ii) a default has occurred with respect to indebtedness for borrowed money of Party B or its Guarantor, as applicable, that has resulted in an acceleration of such indebtedness in an aggregate amount in excess of its Cross Default Threshold. “Cross Default Threshold” means, with respect to Party B or its Guarantor, as applicable, \_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_\_\_\_.00).**]**

***[OR]***

***[if rated Party B or rated Guarantor use the MAC below in lieu of above MAC]***

**[**(b) Material Adverse Change. “Material Adverse Change” means (i) the Credit Rating of Party B or its Guarantor, as applicable, (A) falls below Investment Grade, (B) falls to BBB- with Credit Watch by S&P or Baa3 with a Credit Watch by Moody’s, or (C) either S&P or Moody’s ceases to provide a Credit Rating for Party B or its Guarantor, as applicable, or (ii) a default has occurred with respect to indebtedness for borrowed money of Party B or its Guarantor, as applicable, that has resulted in an acceleration of such indebtedness in an aggregate amount in excess of its Cross-Default Threshold. “Cross Default Threshold” means, with respect to Party B or its Guarantor, as applicable, \_\_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_\_\_\_\_.00).**]**

3. Form of Performance Assurance and Requirements.

(a) Guaranties.

(i) SDG&E Guaranty. Not Applicable.

(ii) Party B Guaranty. To secure all payment obligations of Party B and to support its Threshold hereunder, Party B shall cause its Guarantor to execute and deliver to SDG&E a guaranty with liability limited to not less than Party B’s Threshold, which guaranty must be in form and substance acceptable to SDG&E in its sole discretion.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(i) Each Letter of Credit must be an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Attachment I to this Credit Support Addendum.

(ii) To maintain Performance Assurance as required by this Agreement, Party B shall renew or cause to be renewed each outstanding Letter of Credit that it has provided pursuant to this Credit Support Addendum at least forty-five (45) days prior to the termination or expiration of the Letter of Credit. If Party B does not renew the Letter of Credit by the above-stated deadline, then the Letter of Credit value shall be zero dollars ($0) for purposes of calculating Agreement Exposure and Party B shall have failed to maintain Performance Assurance as required pursuant to this Credit Support Addendum.

(iii) In the event the issuer of such Letter of Credit (A) fails to maintain the requirements of an Eligible LC Bank or Paragraphs 3(b)(i) and (ii), (B) indicates its intent not to renew such Letter of Credit, or (C) fails to honor SDG&E’s properly documented request to draw on an outstanding Letter of Credit by such issuer, Party B shall cure such default by complying with either (I) or (II) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of SDG&E’s Notice to Party B of an occurrence listed in this subsection (Party B’s compliance with either (I) or (II) below is considered the “Cure”):

(I) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank failing to honor the outstanding Letter of Credit, or

(II) posting cash.

If Party B fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by SDG&E, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then if Party B does not renew the Letter of Credit by the above-stated deadline, then the Letter of Credit value shall be zero dollars ($0) for purposes of calculating Agreement Exposure and Party B shall have failed to maintain Performance Assurance as required pursuant to this Credit Support Addendum.

(iv) Notwithstanding the foregoing in Paragraph 3(b)(ii) and (iii), if, at any time, the issuer of such Letter of Credit has a Credit Rating on Credit Watch, then SDG&E may make a demand to Party B by Notice (“LC Notice”) to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on Credit Watch (“Substitute Letter of Credit”). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit (“Substitute Bank Period”).

(A) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then SDG&E shall provide Party B with Notice within five (5) Business Days following the expiration of the Substitute Bank Period (“Ineligible LC Bank Notice Period”) that either:

(I) SDG&E agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank (“Ineligible LC Bank”) and SDG&E will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(II) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Party B shall then have thirty (30) days from the date of SDG&E’s Notice to Cure pursuant to Paragraph 3(b)(iii) and, if Party B fails to Cure, then the last paragraph in Paragraph 3(b)(iii) shall apply to Party B.

(B) If the Parties have not agreed to a Substitute Letter of Credit and SDG&E fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Party B may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(v) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Party B.

(c) Cash. Performance Assurance provided in the form of cash shall be subject to the following provisions:

(i) Interest. Interest on Performance Assurance in the form of cash shall accrue to Party B at the Collateral Interest Rate and shall be calculated for the actual number of days elapsed and on the basis of a year of 360 days. Collateral Interest will be returned to Party B with the return of the Cash collateral.

(ii) Use of Cash. To the maximum extent permitted under Law, if no Event of Default has occurred and is continuing with respect to SDG&E, then SDG&E shall have the right to use, commingle or otherwise use in its business any cash that it holds as Performance Assurance, free from any claim or right of any nature whatsoever of Party B, including any equity or right of redemption by Party B.

4. Credit Requirements.

(a) Timing and Amount.

(i) If at any time, and from time to time, and for any reason (including the exercise by SDG&E of any right or remedy with respect to Performance Assurance, including the drawing of a Letter of Credit), the Agreement Exposure for Party B exceeds Party B’s Threshold, then SDG&E may request of Party B, and Party B shall provide, Performance Assurance in the form of Cash or Letter of Credit in an amount equal to the amount by which the Agreement Exposure exceeds Party B’s Threshold.

(ii) On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that the amount of Performance Assurance be reduced based upon a decrease in the Agreement Exposure as calculated on such Business Day. Any Performance Assurance being provided or returned shall be delivered within five (5) Business Days of the date of receipt of such request if such request is received before the Notification Time, and within six (6) Business Days of the date of receipt of such request if such request was received after the Notification Time; provided, however, that if any Performance Assurance is being required on account of an exercise by SDG&E of any right or remedy with respect to Performance Assurance, including the drawing of a Letter of Credit, Party B must provide replacement Performance Assurance within one (1) Business Day of Party B learning of SDG&E’s exercise of such right or remedy. The amount of Performance Assurance being provided by Party B shall be rounded upwards to the next multiple of fifty thousand dollars ($50,000.00), and the amount of Performance Assurance being returned by SDG&E shall be rounded down to the next multiple of fifty thousand dollars ($50,000.00).

(iii) For purposes of this Agreement, “Agreement Exposure” means the amount resulting from (I) the Settlement Amount that would be payable from Party B to SDG&E, if an Early Termination Date were declared pursuant to Article 9 of the Master Agreement, whether or not an Event of Default has occurred, had all Transactions been terminated; plus (II) the net amount of all other payments owed but not yet paid between the Parties, whether or not such amounts are then due, for performance already provided under the Agreement; plus (III) Invalidation Security Amount required under Section 4(b)(ii), if applicable, less (IV) the amount of any Performance Assurance in the form of Cash or Letter of Credit then held by SDG&E excluding Performance Assurance in the form of Cash or Letter of Credit held as Independent Amount.

(b) Independent Amount.

[(i) Independent Amount. Party B shall have an “Independent Amount”, which means an amount that is equal to ten percent (10%) of the Notional Value of all Outstanding Transactions if at any time during the term of such Outstanding Transaction(s), Party B or its Guarantor has a Credit Rating below Investment Grade or does not have a Credit Rating. Party B shall transfer or cause to be transferred to SDG&E Performance Assurance in the form of Cash or Letter of Credit to satisfy its Independent Amount requirements. The Independent Amount shall not be reduced for so long as there are any outstanding Transactions and shall not be taken into account when calculating Party B’s Agreement Exposure. Subject to Section 4(a)(i) above, upon execution of each Confirmation, Party B must transfer Performance Assurance in the form of Cash or Letter of Credit equal to the Independent Amount for that Transaction.

(ii) Invalidation Security Amount. Following Delivery of the Offset Credit and for the entire Invalidation Term, the Invalidation Security Amount will be added to the Agreement Exposure calculation in accordance with Section 4.1(a)(ii). “Invalidation Security Amount” means an amount that is equal to twenty percent (20%) of the Notional Value of all Offset Credits that have been Delivered and are within the Invalidation Term. If Party B fails to post additional Performance Assurance for the Invalidation Security Amount, in addition to SDG&E’s rights under the Master Agreement, SDG&E may elect instead and at its sole discretion to withhold such amount from current or future payment owed to Party B for the Delivered Offset Credits as cash posted for the Invalidation Security.

(c) Interest. Interest on Performance Assurance in the form of cash shall accrue to Party B at the Collateral Interest Rate and shall be calculated for the actual number of days elapsed and on the basis of a year of 360 days. Interest will be returned to Party B with the return of of the Cash held as Performance Assurance.

(d) Offset. Notwithstanding anything to the contrary in the Agreement, SDG&E may apply any and all amounts otherwise due from it to Party B to any shortfall in Performance Assurance due to it from Party B.

5. Grant of Security Interest; Remedies. In order to secure its present and future obligations under the Agreement to SDG&E, Party B hereby grants to SDG&E a security interest in, lien on, and right of setoff against, all present and future Performance Assurance and any and all proceeds and products thereof. Party B shall take such further action as SDG&E may reasonably require in order for SDG&E to perfect, maintain, and protect SDG&E’s security interest in Performance Assurance. Upon the occurrence and continuance of an Event of Default with respect to Party B, SDG&E may (a) exercise any of the rights and remedies of a secured party under Law with respect to all Performance Assurance; (b) exercise its right of setoff against any and all Performance Assurance; (c) draw on any Letter of Credit issued for its benefit, and (d) liquidate all Performance Assurance then held by SDG&E free from any claim or right of any nature whatsoever of Party B. SDG&E may (i) apply Performance Assurance and proceeds realized upon exercise of such rights or remedies to reduce Party B’s obligations under the Agreement, in such order as SDG&E elects, and Party B shall remain 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) and (ii) hold Performance Assurance and proceeds for Party B’s obligations under the Agreement.

6. Use of Cash. To the maximum extent permitted under Law, if no Event of Default has occurred and is continuing with respect to SDG&E, then SDG&E shall have the right to use, commingle or otherwise use in its business any cash that it holds as Performance Assurance, free from any claim or right of any nature whatsoever of Party B, including any equity or right of redemption by Party B.

7. Credit Events Of Default. The following events (“Credit Events”) shall be additional Events of Default of Party B under the Master Agreement:

(a) Party B’s Guarantor repudiates any obligation to SDG&E or any guaranty;

(b) Party B fails to establish, maintain, extend or increase Performance Assurance when and as required pursuant to this Credit Support Addendum;

(c) Party B’s Guarantor, if any, fails to perform any covenant set forth in any guaranty delivered pursuant to this Credit Support Addendum;

(d) the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of Party B or Party B’s Guarantor under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the Cross Default Threshold, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by Party B or Party B’s Guarantor in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the Cross Default Threshold;

(e) Party B or its Guarantor fails to timely provide financial information required in this Credit Support Addendum, and such failure is not remedied within thirty (30) days after Notice of such failure is given to Party B;

(f) Party B otherwise fails to comply with this Credit Support Addendum.

8. Financial Information. Upon request by SDG&E, Party B or its Guarantor, as applicable, shall deliver to SDG&E (a) within one hundred twenty (120) days following the end of its fiscal year, a copy of the audited consolidated financial statements for such fiscal year certified by independent certified public accountants and (b) within ninety (90) days after the end of each of the first three fiscal quarters of its fiscal year, a copy of the quarterly unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, international financial reporting standards or such other principles then in effect.

9. Successors. In the event of an assignment of Agreement by Party B, the assignee will be required to meet all credit requirements of SDG&E, including amendment of this Credit Support Addendum to SDG&E’s satisfaction. Nothing in this Paragraph permits an assignment or delegation not in accordance with Section 15.5 of the Master Agreement.

10. Definitions. The following definitions apply to this Credit Support Addendum:

“Agreement Exposure” is defined in Paragraph 4(a)(iii).

“Collateral Interest Rate” means the rate for any day opposite the caption “Federal Funds (Effective)” for such day as published for such day in Federal Reserve Publication H.15 (519) or any successor publication as published by the Board of Governors of the Federal Reserve System.

“Credit Event” is defined in Paragraph 7.

“Credit Rating” means with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit enhancements) or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody’s. If the entity is rated by both S&P and Moody’s and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody’s, but not both, then the available rating shall determine the Credit Rating.

“Credit Watch” means S&P or Moody’s ratings outlook “Watch Negative”, “Possible Downgrade”, “Review for Downgrade”, “Review for Possible Downgrade” or other similar terminology.

“Eligible LC Bank” means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to SDG&E in its sole discretion and such bank must have a Credit Rating of at least: (a) “A‑”, with a stable designation from S&P and “A3”, with a stable designation from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-”, with a stable designation from S&P or “A3”, with a stable designation from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

“Guarantor” means the entity identified in Paragraph 1 of this Credit Support Addendum.

“Independent Amount” means with respect to SDG&E zero dollars ($0) and with respect to Party B, has the meaning set forth in Paragraph 4(b)(i).

“Ineligible LC Bank” is defined in Paragraph 3(b)(iv)(A)(I).

“Ineligible LC Bank Notice Period” is defined in Paragraph 3(b)(iv)(A).

“Invalidation Security” means Performance Assurance that is to be in the amount of the Invalidation Security Amount provided in each Offset Credit Transaction.

“Invalidation Security Amount” means with respect to SDG&E zero dollars ($0) and with respect to Party B, has the meaning set forth in Paragraph 4(b)(ii).

“Investment Grade” means a Credit Rating of “BBB- or above” by S&P and “Baa3 or above” by Moody’s if rated by both S&P and Moody’s or “BBB- or above” by S&P or “Baa3 or above” by Moody’s if rated by S&P or Moody’s but not both.

“LC Notice” is defined in Paragraph 3(b)(iv).

“Letter of Credit” is defined in Paragraph 3(b)(i).

“Material Adverse Change” or “MAC” is defined in Paragraph 2(b).

“Moody's” means Moody's Investors Service, Inc. or its successor.

“Notification Time” means 11:00 a.m. Pacific prevailing time/1:00 p.m. Eastern prevailing time on a Business Day.

“Notional Value” of a Transaction means the aggregate sum of Contract Price times Quantity, as of the Trade Date.

“Outstanding Transactions” means Transactions for which the Product has not yet been Delivered.

“Performance Assurance” has the meaning set forth in Section 1.1, Definitions, of the Master Agreement.

“S&P” means Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Substitute Bank Period” is defined in Paragraph 3(b)(iv).

“Substitute Letter of Credit” is defined in Paragraph 3(b)(iv).

“Threshold” is defined in Paragraph 2(a).

“Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Party B or an Eligible LC Bank to SDG&E or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to SDG&E thereunder, if acceptable to SDG&E by Party B or Eligible LC Bank to SDG&E.

**ATTACHMENT I**

**LETTER OF CREDIT FORM**

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Date:

BENEFICIARY:

San Diego Gas & Electric Company

555 W. 5th St. ML 18A3

Los Angeles, CA 90013

Attention: Credit Manager

Ladies and Gentlemen:

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

This Letter of Credit shall be of no further force or effect upon the close of business on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance herein. For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in San Diego, California.

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

1. The original of this Letter of Credit and all amendments; and

2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

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

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

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (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 except as described in the succeeding paragraph.

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

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

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). To the extent that any of the terms of this Letter of Credit are inconsistent with the ISP, the terms of this Letter of Credit shall govern. As to matters not covered by the ISP or this Letter of Credit, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

By:

Title:

ATTACHMENT II

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number.

(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number:

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

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

[ ]A. An Event of Default, as defined in the Master Allowance/Offset Credit Purchase Agreement between Beneficiary and Applicant (the “Agreement”), with respect to the Applicant has occurred and is continuing.

[ ]B. The Letter of Credit will expire in fewer than twenty (20) Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_\_/100ths (U.S.$ ), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this \_\_\_\_ day of , \_\_\_\_\_.

Beneficiary: SAN DIEGO GAS & ELECTRIC COMPANY

By:

Name:

Title:

**EXHIBIT A to**

**MASTER ALLOWANCE/OFFSET CREDIT PURCHASE AGREEMENT**

**Form of Offset Credit Confirmation**

**[**provided separately**]**