# **LONG FORM CONFIRMATION**

# **FOR RESOURCE ADEQUACY CAPACITY PRODUCT**

# Resource Adequacy Contract Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This confirmation letter (“Confirmation”) confirms the transaction (the “Transaction”) between San Diego Gas & Electric Company (“Buyer”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”), each individually a “Party” and together the “Parties”, dated as of \_\_\_\_\_\_\_\_\_\_\_, 2024 (the “Confirmation Execution Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3.1 and Section 3.2 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the “EEI Agreement”) with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the “Master Agreement”). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

|  |  |
| --- | --- |
| **Name:** Party A / Buyer | **Name:** Party B / Seller |
| **All Notices:**  San Diego Gas & Electric Company  8315 Century Park Court CP 21D  San Diego CA 92123-1593  Attn: Contract Administration  Telephone: (858) 650-6176  Duns: 006911457  Federal Tax ID Number: 95-1184800 | **All Notices:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_  Duns: \_\_\_\_\_\_\_\_\_  Federal Tax ID Number: \_\_\_\_\_\_\_\_\_\_ |
| **Invoices:**  San Diego Gas & Electric Company  8315 Century Park Court  San Diego CA 92123-1593  Attn: Energy Accounting Manager  Telephone: (858) 650-6177 | **Invoices:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ |
| **Scheduling:**  San Diego Gas & Electric Company  8315 Century Park Court, CP 21D  San Diego, CA 92123-1593  Attn: Transaction Scheduling Manager  Day Ahead: (858) 650-6168  Real Time: (858) 650-6160 | **Scheduling:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Day Ahead: (\_\_\_) \_\_\_-\_\_\_\_  Real Time: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ |
| **Payments:**  San Diego Gas & Electric Company  8315 Century Park Court  San Diego CA 92123-1593  Attn: Energy Accounting Manager  Telephone: (858) 650-6177 | **Payments:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ |
| **Wire Transfer:**  Union Bank of California  445 South Figueroa Street  Los Angeles CA 90071  ABA Routing Number: 122000496  Payee: San Diego Gas & Electric Company  Account Number: 4430000352  Confirmation: SDG&E – Major Markets | **Wire Transfer:**  < bank street address >  < bank city/state/zip >  ABA Routing Number: \_\_\_\_\_\_\_\_\_\_  Payee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Account Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  Confirmation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ |
| **Credit and Collections:**  San Diego Gas & Electric Company  8315 Century Park Court CP 21C  San Diego, CA 92123  Attn: Energy Risk Manager  Telephone: (858) 650-6190  Email: sdge\_mmcredit@sdge.com | **Credit and Collections:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ |
| With additional Notices of an Event of Default or Potential Event of Default to:  San Diego Gas & Electric Company  8330 Century Park Ct.  San Diego, California 92123  Attn: General Counsel  Telephone: (858) 650-6141 | **With additional Notices of an Event of Default or Potential Event of Default to:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ |

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

|  |  |  |
| --- | --- | --- |
| **Article Two** |  | |
| Transaction Terms  and Conditions | 🞎 Optional provision in Section 2.4.   If not checked, inapplicable. | |
| **Article Four** |  | |
| Remedies for Failure  to Deliver or Receive | 🗷 Accelerated Payment of Damages.   If not checked, inapplicable. | |
| **Article Five** | 🞎 Cross Default for Party A: | |
| Events of Default; Remedies | 🞎 Party A: N/A | Cross Default Amount: N/A |
|  | 🞎 Other Entity: N/A | Cross Default Amount: N/A |
|  | 🞎 Cross Default for Party B: | |
|  | 🞎 Party B: N/A | Cross Default Amount: N/A |
|  | 🞎 Other Entity: N/A | Cross Default Amount: N/A |
|  | 5.6 Closeout Setoff | |
|  | 🗷 Option A (Applicable if no other selection is made.) | |
|  | 🞎 Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | 🞎 Option C (No Setoff) | |
| **Article 8** | 8.1 Party A Credit Protection: [SDG&E CREDIT DEPARTMENT TO EVALUATE BASED ON COUNTERPARTY] | |
| Credit and  Collateral Requirements | (a) Financial Information:  🞎 Option A | |
|  | 🞎 Option B Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  🞎 Option C Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | (b) Credit Assurances: | |
|  | 🞎 Not Applicable  🞎 Applicable | |
|  | (c) Collateral Threshold: | |
|  | 🞎 Not Applicable  🞎 Applicable | |
|  | (d) Downgrade Event: | |
|  | 🗷 Not Applicable  🞎 Applicable | |
|  | (e) Guarantor for Party B: N/A | |
|  | Guarantee Amount: N/A | |
|  | 8.2 Party B Credit Protection | |
|  | (a) Financial Information:  🞎 Option A | |
|  | 🞎 Option B Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  🞎 Option C Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

|  |  |  |
| --- | --- | --- |
|  | | (b) Credit Assurances: |
|  | | 🗷 Not Applicable  🞎 Applicable |
|  | | (c) Collateral Threshold: |
|  | | 🗷 Not Applicable 🞎 Applicable |
|  | | If applicable, complete the following: |
|  | | Party A Collateral Threshold: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_; provided, however, that Party A’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.  Party A Independent Amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Party A Rounding Amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | | (d) Downgrade Event: |
|  | | 🗷 Not Applicable  🞎 Applicable |
|  | | If applicable, complete the following: |
|  | | * It shall be a Downgrade Event for Party A if Party A ‘s Credit Rating falls below \_\_\_\_\_\_\_ from S&P or \_\_\_\_\_\_\_ from Moody’s or if Party A is not rated by either S&P or Moody’s * Other:   Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | | (e) Guarantor for Party A: N/A | |
|  | | Guarantee Amount: N/A | |
| **Article 10** |  | |
| Confidentiality | 🗷 Confidentiality Applicable If not checked, inapplicable. | |
| **Schedule M** | 🞎 Party A is a Governmental Entity or Public Power System | |
|  | 🞎 Party B is a Governmental Entity or Public Power System | |
|  | 🞎 Add Section 3.6. If not checked, inapplicable | |
|  | 🞎 Add Section 8.4. If not checked, inapplicable | |
|  |  | |
| **Other Changes** | 1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full. 2. Section 1.23 is deleted in its entirety and replaced with the following:   “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.  (a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:  (i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;  (ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;  (iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or  (b) Force Majeure shall not be based on:  (i) Buyer’s inability economically to use or resell the Product purchased hereunder;  (ii) Seller’s ability to sell the Product at a price greater than the price set forth in this Agreement;  (iii) Seller’s inability to obtain governmental approvals or other approvals of any type for the construction, operation, or maintenance of the Unit;  (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Unit, except to the extent Seller’s inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;  (v) Seller’s failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;  (vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller’s Affiliates, or the Unit  (vii) delays or increased costs arising or resulting from the COVID-19 epidemic, or  (viii) any equipment failure except to the extent such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) though (a)(iv) above.   1. Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”. 2. Section 2.3 is deleted in its entirety and replaced with the following:   “2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties.”   1. Section 2.4 is hereby amended by deleting the words “either orally or” in the seventh line. 2. The following new Sections 5.1(i) and 5.1(j) are inserted immediately after Section 5.1(h):   “(i) Seller’s failure to deliver a Remedial Action Plan if such failure is not remedied within five (5) Business Days after receipt of Buyer’s Notice of such failure.  (j) Seller’s failure to (i) achieve any individual Critical Milestone by the date that is forty-five (45) days after the corresponding milestone date set forth in Appendix B, subject to extension on a day-for-day basis pursuant to Section 3.3(d)(2), and (ii) deliver a Remedial Action Plan that demonstrates to Buyer’s reasonable satisfaction that Seller can achieve the Initial Delivery Date by the end of the Cure Period following the Guaranteed Initial Delivery Date, if such failure is not remedied within five (5) Business Days after receipt of Buyer’s Notice of such failure.”   1. Section 5.2 is amended by adding the following at the end of that section:   “Notwithstanding any provision in this Agreement to the contrary, if the Non-Defaulting Party’s aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.”   1. Section 6.8 is deleted it in its entirety. 2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section. 3. Section 10.5 of the Master Agreement shall be deleted in its entirety and replaced with the following:   “Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided that either Party may assign this Agreement to an Affiliate without the other Party’s consent (and thereby relieving itself from further liability hereunder) so long as (a) the assignee is as creditworthy as the assigning party, or better, (b) the assigning Party notifies the other Party no later than thirty (30) Business Days before the effective date of the assignment and the assignee assumes in writing all of the assigning Party’s obligations and liabilities hereunder. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer’s prior written consent. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and thereby relieving itself from further liability hereunder), assign this Agreement to any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Buyer may also assign this Agreement (and thereby relieve itself from further liability hereunder), to a Qualified Assignee, so long as Buyer notifies Seller no later than thirty (30) days before the effective date of the assignment and the assignee assumes in writing all of Buyer’s obligations and liabilities hereunder. “Qualified Assignee” shall mean: any community choice aggregation entity formed in the State of California with a Credit Rating of BBB- or better. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.   1. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:   “THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”   1. Section 10.11 of the Master Agreement shall be deleted in its entirety and replaced with the following:   10.11 Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party’s Affiliates and its and their officers, directors, employees, lenders or potential lenders, contractors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer’s Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) in order to comply with any Applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”), other than to those entities set forth in clause (vi); (v) to a Qualified Assignee subject to an appropriate non-disclosure agreement; or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (iv) of this Section 10.11 (“Disclosure Order”), each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Except as otherwise agreed to in this Section 10.11, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld or delayed.   1. The following is added to the Master Agreement as a new Section 10.12:   10.12 Standard of Review. No Party shall seek to revise the rates, terms or conditions of service of this Agreement pursuant to the provisions of Section 205, 206 or 306 (or any other provision) of the Federal Power Act. Absent the agreement of all Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S., 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. (2010) (commonly known as the “Mobile-Sierra” doctrine).   1. Schedule P: Products and Related Definitions shall be deleted in its entirety. | |
|  |  | |

1. **Definitions**
   1. “Accepted Electrical Practices” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of other, but rather to those practices, methods and act generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.
   2. “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
   3. “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
   4. “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
   5. “Buyer” has the meaning specified in the introductory paragraph.
   6. “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
   7. “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.
   8. “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, *[Comment: Include bracketed language if the Product includes flexible capacity]* [(c) the Flexible RA Attributes, and (c/d)] any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
   9. “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
   10. “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
   11. “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
   12. “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
   13. “Confirmation” has the meaning specified in the introductory paragraph.
   14. “Confirmation Effective Date” has the meaning specified in Section 2.2.
   15. “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
   16. “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
   17. “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.4.
   18. “Contract Term” has the meaning set forth in Section 2.1.
   19. “Construction Period Security” has the meaning specified in Section 9.1(b).
   20. “CPUC” means the California Public Utilities Commission.
   21. “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer and all other relief requested in SDG&E’s submission of the Agreement for approval, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) finds that the procurement under this Agreement satisfies all of the requirements set forth in CPUC decision(s) **[INSERT APPLICABLE DECISION NUMBERS]**.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

* 1. “CPUC Approval Security” has the meaning specified in Section 9.1(a).
  2. “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
  3. “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
  4. “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement.
  5. “Critical Milestone” means each of the milestones indicated as such in Schedule B.
  6. “Daily Delay Damages” means liquidated damages paid by Seller to Buyer in the amount of [INSERT] ($XX,XXX) per day for each day of delay.
  7. “Delivery Period” has the meaning specified in Section 3.3.
  8. “Delivery Period Security” has the meaning specified in Section 9.1(c).
  9. “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
  10. “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
  11. “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
  12. “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
  13. “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
  14. “GADS” means the Generating Availability Data System, or its successor.
  15. “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
  16. “Guaranteed Initial Delivery Date” has the meaning specified in Section 3.3(a).
  17. “Initial Delivery Date” has the meaning set forth in Section 3.3(b).
  18. “Initial Showing Month” has the meaning set forth in Section 3.3(b).
  19. “Interconnection Agreement” means the interconnection agreement entered into by Seller and/or Seller’s Affiliates pursuant to which the Project will be interconnected with the Participating Transmission Owner’s or other utility owned or managed electric system or to the CAISO Grid, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.
  20. “Interconnection Facilities” means all apparatus installed to interconnect the Project to the Participating Transmission Owner’s or other utility owned or managed electric system or to the CAISO Grid to make available to Buyer the Contract Quantity, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner’s electric system (or other system to which the Participating Transmission Owner’s electric system is connection, including the CAISO Grid) and Buyer’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner’s electric system or on the systems of others to which the Participating Transmission Owner’s electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner’s electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.
  21. “Interest Rate” means, for purposes of this Transaction, for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.
  22. “Letter of Credit” means an irrevocable standby letter of credit in substantially the form of Appendix C attached hereto issued by a commercial bank chartered under the laws of the United States or a U.S. branch of a foreign commercial bank in each case with a Credit Rating of at least “A-” by S&P or “A3” by Moody’s.
  23. “Local Capacity Area” has the meaning set forth in the Tariff.
  24. “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
  25. “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
  26. “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
  27. “LSE” means load-serving entity.
  28. “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
  29. “Master Agreement” has the meaning specified in the introductory paragraph.
  30. “Milestone Schedule” has the meaning specified in Section 2.3.
  31. “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
  32. “Monthly Payment” has the meaning specified in Section 4.1.
  33. “Monthly Progress Report” has the meaning specified in Section 2.3.
  34. “Moody’s” means Moody’s Investors Services, Inc. or its successor.
  35. “NERC” means the North American Electric Reliability Corporation, or its successor.
  36. “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
  37. “Net Qualifying Capacity” has the meaning set forth in the Tariff.
  38. “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.
  39. “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
  40. “Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected. As of the Confirmation Execution Date, the Participating Transmission Owner is [INSERT].
  41. “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
  42. “Product” has the meaning specified in Section 3.1.
  43. “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
  44. “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
  45. “Qualified Assignee” has the meaning set forth in the new Section 10.5 of the Master Agreement.
  46. “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
  47. “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
  48. “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
  49. “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
  50. “Remedial Action Plan” has the meaning specified in Section 2.3.
  51. “Replacement Capacity” means capacity which has equivalent Capacity Attributes, including qualification as incremental to the list of resources that form the baseline of the need determination conducted in Rulemaking 20-05-003 as such list is set forth as of the Confirmation Execution Date at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_baseline_gen_list_20220902>, as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
  52. “Replacement Unit” means a generating unit providing Replacement Capacity.
  53. “Resource Category” shall be as described in the CPUC Filing Guide.
  54. “RMR Contract” has the meaning set forth in the Tariff.
  55. “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
  56. “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
  57. “Seller” has the meaning specified in the introductory paragraph.
  58. “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
  59. “Substitution Rules” has the meaning set forth in Section 3.8(b).
  60. “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]*.
  61. “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
  62. “Transaction” has the meaning specified in the introductory paragraph.
  63. “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
  64. “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
  65. “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Quantity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Quantity for which Seller is required hereunder, but fails, to provide Replacement Quantity to Buyer.
  66. “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
  67. “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

1. **Term**
   1. Contract Term

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

* 1. Conditions Precedent; Binding Nature

Except for obligations required prior to the Confirmation Effective Date, this Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the “Confirmation Effective Date”). Buyer will diligently pursue CPUC Approval after the Confirmation Execution Date. No later than [\_\_\_\_\_\_\_\_\_\_\_\_], Buyer shall have obtained CPUC Approval.  Prior to this deadline, should the CPUC issue an order approving this Agreement but with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking CPUC Approval therefor.  If, no later than [\_\_\_\_\_\_\_\_\_\_\_\_], no agreement is reached, either Party may terminate this Agreement upon delivery of notice to the other Party.

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then Buyer may terminate this Agreement upon delivery of notice to Seller. This Agreement shall be effective and binding as of the Confirmation Effective Date.

* 1. Milestone Schedule.

In order to meet the Guaranteed Initial Delivery Date, Seller shall use reasonable efforts to meet the construction milestones set forth on Appendix B (“Milestone Schedule”) and to avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the Project has not yet met its Initial Delivery Date, Seller shall deliver to Buyer a monthly progress report, substantially in the form set forth in Appendix C (“Monthly Progress Report”), describing its compliance with the Milestone Schedule, including projected time to completion of any milestones, for the Project. Seller shall include in any Monthly Progress Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and provide any such documents as may be reasonably requested by Buyer. In addition, Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which it is aware which could materially impact its ability to meet the Milestone Schedule. If Seller misses a milestone listed in the Milestone Schedule by more than ten (10) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone Schedule completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail (a) any delays (actual or anticipated) beyond the scheduled Milestone Schedule dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and (b) Seller’s detailed description of its proposed course of action to achieve the missed milestones and all subsequent milestones by the Guaranteed Initial Delivery Date or the end of the Cure Period following the Guaranteed Initial Delivery Date.

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

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for Force Majeure, if the Unit(s) are not available to provide any portion of the Product, for any reason including without limitation any Outage or any adjustment of the Capacity Attributes of any Unit(s), Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10.

* 1. Delivery Period
     1. Guaranteed Initial Delivery Date. Subject to Section 3.3(d)(1), Seller shall achieve the Initial Delivery Date by [INSERT], as such date may be extended pursuant to Section 3.3(d)(2) (“Guaranteed Initial Delivery Date”).
     2. The “Delivery Period” shall be the period during which the Product is available to Buyer, and will commence at 12:01 a.m. PPT on the first day of the first Showing Month for which the Product is included in a Supply Plan (the “Initial Showing Month”) and shall continue until midnight on the date that is the last day of the month in which the [INSERT] ([XX]) anniversary of the Initial Showing Month occurs; provided, however that the Initial Showing Month shall not be earlier than [INSERT MONTH, YEAR. Within [thirty-five (35)] days after the Initial Delivery Date, Seller shall submit a Supply Plan for the first month of the Delivery Period. The “Initial Delivery Date” shall be the date upon which Seller has completed Seller’s obligations set forth in this Section 3.3(b), below, in order to bring the Project, or designated portion thereof, into full operation:
        + 1. Seller has completed the Milestones according to the Milestone Schedule in Appendix A, in order to bring the Project, or designated portion thereof, into full operation as contemplated by this Agreement;
          2. the Project has been constructed and installed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices;
          3. the Project shall have successfully passed all commercial operation tests at a level that demonstrates at least one hundred percent (100%) of the Contract Quantity, and complete test reports have been submitted to Buyer, as set forth in a written notice from Seller to Buyer;
          4. Seller has received its market-based rate authority from FERC to sell Product to Buyer under the terms of this Agreement, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;
          5. Seller has executed the Participating Generator Agreement and the Meter Service Agreement required by the CAISO or any Participating Transmission Owners with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);
          6. Seller has achieved and been granted “Full Capacity Deliverability Status” for the interconnection capacity applicable to the Project for a fraction of the Project at least equal to the Contract Quantity, and entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Participating Transmission Owner’s electric system and CAISO Grid; and
          7. Seller has delivered to Buyer the required Delivery Period Security and related documents and instruments as set forth in Section 9.1(c).
     3. Seller Initial Delivery Date Representation. As of the Initial Delivery Date, Seller represents that it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.
     4. Delayed Initial Delivery Date.
        + 1. Daily Delay Damages. If Seller has not satisfied the conditions precedent set forth in Section 3.3(b) for the Initial Delivery Date of the Project by the Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of the lesser of (I) [one hundred twenty (120) days], minus the number of days of extension for Force Majeure pursuant to Section 3.3(d)(2)(C), or (II) one hundred (100) days, of delay (the “Cure Period”). Buyer shall be entitled to recover the Daily Delay Damages owed by Seller from the Construction Period Security held by Buyer if Seller fails to pay the Daily Delay Damages in accordance with this Agreement. Each Party agrees and acknowledges that (A) the actual damages that Buyer would incur due to a delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date would be difficult or impossible to predict with certainty, (B) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (C) the Daily Delay Damages set forth in this section are the sole and exclusive remedy for Seller’s delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date but shall not otherwise act to limit any of Buyer’s rights or remedies arising from any other Event of Default by Seller.
          2. Excused Delays. For all purposes under this Agreement, the Guaranteed Initial Delivery Date and the milestone date for each Critical Milestone will be extended on a day for day basis without imposition of any Daily Delay Damages to the extent that Seller is delayed in its critical path to achieving the Initial Delivery Date by the Guaranteed Initial Delivery Date or a Critical Milestone date due to any of the following events:

Delay by the Participating Transmission Owner or the CAISO in installing the Interconnection Facilities for which it is responsible in accordance with the schedule set forth in the Interconnection Agreement. For clarity, Seller shall not be excused and shall be required to pay Daily Delay Damages if the Guaranteed Initial Delivery Date has not been achieved due to the Participating Transmission Owner or the CAISO installing the Interconnection Facilities within the schedule set forth in the Interconnection Agreement. Seller acknowledges and agrees that nothing in this Agreement is intended to abrogate, amend or modify the terms of the Interconnection Agreement between it and the Participating Transmission Owner, or any other agreement between it and the Participating Transmission Owner. Except as may be set forth in such electrical interconnection agreements, the Participating Transmission Owner has not made and makes no, and Seller is not relying on any, representations or warranties of any kind or nature, express or implied, with respect to the electrical interconnection, including, but not limited to, any representations or warranties concerning the costs, construction schedule, or permitting of, or any other matter related to, the electrical interconnection for the Project. Seller’s sole and exclusive remedy under this Agreement for any delay by the Participating Transmission Owner or the CAISO in completing the Interconnection Facilities for which it is responsible is an extension of the Guaranteed Initial Delivery Date in accordance with this Section 3.3(d)(2)(A).

Buyer’s delay or other failure to perform any of its material obligations under this Agreement which are to be performed prior to the Initial Delivery Date in a manner that directly delays the Initial Delivery Date.

Delays caused by Force Majeure up to no more than [ninety (90)] days in aggregate.

Any delay in obtaining CPUC Approval beyond [INSERT].***]***

* 1. Contract Quantity:

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

**CONTRACT QUANTITY TABLE**

| **Unit Name** | **CAISO Resource ID\*** | **Month(s)** | **Unit Contract Quantity (MW)** | |
| --- | --- | --- | --- | --- |
| **Capacity Attributes (excluding Flexible RA Attributes)** | **Flexible RA Attributes** |
|  | [INSERT] | All Showing Months in Delivery Period |  |  |
| \* *CAISO Resource ID* should match a Unit described in Appendix A | | | | |

* 1. Delivery of Product

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

* + 1. Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
    2. Seller shall submit, or cause each Unit’s SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit’s SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.
  1. CAISO/CPUC Offer Requirements

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

* 1. Reserved ***[Insert the following for projects with shared facilities:***

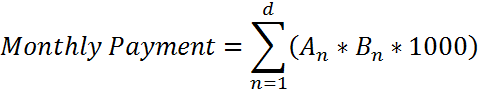
Interconnection

* + 1. The Parties acknowledge and agree that certain of the Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements (“Shared Facilities”); *provided*,such agreements provide for separate metering of the Project.
    2. For the Contract Term, the Interconnection Agreement shall provide for interconnection capacity with full capacity deliverability status for a fraction of the Project at least equal to the Contract Quantity. If there is a partial outage of the Shared Facilities, any associated reduction in capacity shall be allocated pro rata between the Project and the other generating facilities and energy storage projects utilizing the Shared Facilities for purposes of Section 3.2.
    3. Seller shall secure through the CAISO the CAISO Resource ID that is to be used solely for this Project.***]***
  1. Unit Substitution; RA Replacement Capacity
     1. RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller’s reasonable approval, that Seller not, or cause each Unit’s SC not to, list a portion or all of a Unit’s applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as “RA Substitute Capacity” and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
     2. Seller’s Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes]*[Comment: Include bracketed language if the Product includes flexible capacity]* (“Substitution Rules”) and (ii) take, or cause each Unit’s SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
     3. Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.6.
     4. Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller’s failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.
  2. Buyer’s Re-Sale of Product

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

1. **Payment**
   1. Monthly Payment

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



***where:***

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

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

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

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

CAPACITY PRICE TABLE

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

* 1. Reserved.
  2. Allocation of Other Payments and Costs
     1. Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
     2. Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
     3. In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
     4. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
     5. Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of Seller and for Seller’s account.
  3. Offset Rights

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

* 1. Audit

Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and the NQC of the Unit.

1. **Seller's Failure to Deliver Contract Quantity**
   1. Seller’s Duty to Provide Replacement Capacity

Seller will be excused if it is unable to provide any portion of the Contract Quantity for the reasons set forth in Section 3.2. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

* + 1. Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
    2. Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity (less any reductions permitted pursuant to Section 3.2).

*provided* that the designation of any Replacement Unit by Seller shall be subject to Buyer’s prior written approval, which shall not be unreasonably withheld. If the Product includes Local RA Attributes, Seller may propose to provide Replacement Capacity from one or more Replacement Units that do not provide Local RA Attributes, and, upon Seller’s request, Buyer will reasonably evaluate such proposal and provide prompt notice of its determination to Seller. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller’s failure to properly provide Replacement Capacity, including Seller’s obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer under Section 5.2 and/or the indemnification of Buyer against any penalties, fines or costs under Section 5.3 and Section 10.

* 1. Damages for Failure to Provide Replacement Capacity

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

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

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

* + 1. Seller’s failure to provide any portion of the Contract Quantity or any portion of the Replacement Capacity;
    2. Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Quantity;
    3. A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder, or;
    4. any other failure by Seller to perform its material obligations under this Confirmation.

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

1. **Other Buyer and Seller Covenants**
   1. Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

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

* 1. Seller’s Represents, Warrants and Covenants

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

* + 1. Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
    2. No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit’s owner or operator;
    3. Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
    4. Seller shall, and each Unit’s SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
    5. If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
    6. Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
    7. Seller has notified the SC of each Unit that Seller is obligated to cause each Unit’s SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
    8. Seller has notified each Unit’s SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
    9. In the event Seller has rights to the energy output of any Unit, and Seller or the Unit’s SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
    10. The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.
  1. ***[For a project with a delivery Term in excess of 12 years:*** Climate Risk

Seller hereby provides an acknowledgement that it has considered long-term climate risks to the Project as required by Ordering Paragraph 14 of CPUC decision D.20-08-046, and will provide a facility safety plan considering climate risks to Buyer, when available.***]***

1. **Confidentiality**

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

1. **Counterparts**

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

1. **Collateral Requirements** [NOTE to respondents: Amount to be determined by SDG&E credit department]
   1. To secure its obligations under this Agreement Seller agrees to deliver to Buyer and maintain in full force and effect for the period set forth below, the following Performance Assurance:
      1. CPUC Approval Security, in the amount of [$\_\_\_\_\_\_\_\_\_\_] in the form of cash or a Letter of Credit from the Confirmation Execution Date of this Agreement until the return date specified in Section 9.2(a) below; and
      2. Construction Period Security in the amount of [$\_\_\_\_\_\_\_\_] in the form of cash or a Letter of Credit from five (5) Business Days after the Confirmation Effective Date until the return date specified in Section 9.2(b) below; and
      3. Delivery Period Security in the amount of [$\_\_\_\_\_\_\_\_\_\_] in the form of cash or a Letter of Credit from the commencement of the Delivery Period until the return date specified in Section 9.2(c) below.

The Performance Assurance set forth above shall not be deemed a limitation of damages.

* 1. Return of Performance Assurance.
     1. Buyer shall promptly return to Seller the unused portion of the CPUC Approval Security after the earlier of (A) the date on which Seller has delivered the Construction Period Security, as applicable, and (B) termination of the Agreement.
     2. Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Period Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
     3. Buyer shall promptly return to Seller the unused portion of the Delivery Period Security after the following have occurred: (A) the Delivery Period has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

### Collateral Posting.

### In the event that Seller elects to provide cash as the applicable Performance Assurance, Buyer shall deposit (or cause to be deposited) such cash in an account bearing interest at the rate per annum equal to the Interest Rate. Interest shall be calculated monthly (without compounding) at a monthly rate of 1/12 of such Interest Rate, shall be retained in such account, and shall be applied toward the amount of the applicable Performance Assurance, and any amount in excess of the required amount of applicable Performance Assurance on the last Business Day of each calendar year shall be returned to Seller.

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

* + 1. Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit. If Seller fails to renew or cause the renewal of any outstanding Letter of Credit on a timely basis as provided in this section, Buyer shall have the right to draw the entire amount of such Letter of Credit.
    2. Upon, or at any time after, the occurrence and during the continuation of an Event of Default by Seller, then Buyer may draw on up to the entire undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be used to offset Buyer’s damages and to the extent in excess of Buyer’s damages shall be deemed Performance Assurance as security for the Seller’s obligations to Buyer and Buyer shall at all times have the exclusive dominion and control of, and at no time shall Seller have any rights or powers to direct or control such cash proceeds. Notwithstanding Buyer’s receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (i) for any failure to provide sufficient Performance Assurance or (ii) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.
    3. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.
    4. An additional “Event of Default” shall be, with respect to Seller as the “Defaulting Party”, the occurrence of any of the following with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives notice of the occurrence of any of the following events:
       1. the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s;
       2. the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
       3. the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
       4. such Letter of Credit fails or ceases to be in full force and effect at any time;
       5. the issuer of such Letter of Credit becomes Bankrupt; or
       6. the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit.

1. **Declaration of an Early Termination Date and Calculation of Settlement Amounts**

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

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

*[Signature page follows]*

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SAN DIEGO GAS & ELECTRIC COMPANY   
a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a California corporation

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPROVED as to legal form \_\_\_\_\_

**APPENDIX A**

**Unit Information**

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

**APPENDIX B**

**Project must be built in accordance with the project description in Appendix A.**

**MILESTONE SCHEDULE**

*[SDG&E NOTE: THE BELOW SCHEDULE IS ILLUSTRATIVE AND SHOULD BE EXPANDED BASED ON THE SPECIFIC PROJECT STATUS]*

|  |  |  |
| --- | --- | --- |
| **Milestone Description** | **Milestone Date** | **Critical Milestone**  **(Y / N)** |
| File application(s) for Required Permit(s) |  | Y |
| Receipt of Required Permit(s) |  |  |
| Execute purchase order for the battery system |  |  |
| Execution of main construction contract or  issuance of a notice to proceed prior to final contract execution |  | Y |
| Site readiness for construction (including receipt of all zoning approvals, easements, rights of way, utility access) |  |  |
| Commencement of Construction Activities |  | Y |
| Battery deliveries to site (or staging warehouse in California) (at least 90% of total) |  | Y |
| Synchronization of the Energy Storage System to CAISO Grid |  |  |
| Submittal of all operational documentation including successful acceptance testing and approved test report |  |  |
| Completion of system commissioning and pre-operational testing |  |  |
| Achievement of Initial Delivery Date |  | Y |

**Appendix C [If applicable]**

**Form of Letter of Credit**

**LETTER OF CREDIT FORM**

Reference Number: Transaction Date:

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

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

This Letter of Credit shall be of no further force or effect upon the close of business on

or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

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

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at

or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

By:

Title:

ATTACHMENT A TO APPENDIX C

DRAWING CERTIFICATE TO [ISSUING BANK NAME]

IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number.

(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit

Reference Number:

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

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to

$ , for the following reason(s) [check applicable provision]:

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

[ ] B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

[ ] C. Applicant has forfeited all or part of its Pre-Construction Security as set forth and defined in the Agreement.

[ ] D. Applicant has incurred Daily Delay Damages as set forth and defined in the Agreement.

1. 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.
2. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

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

**APPENDIX B**

**FORM OF MONTHLY PROGRESS REPORT**

**Monthly Progress Report**

**of**

**[INSERT SELLER’S NAME]**

**provided to**

**San Diego Gas & Electric Company**

[Date]

**Instructions**.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Long-Form Confirmation Agreement by and between [insert Seller’s name] (Seller) and San Diego Gas & Electric Company (Buyer) dated [\_\_\_\_\_\_\_\_\_\_\_\_, 2024] (the “Agreement”).

Seller shall review the status of each significant element of the Milestone Schedule and Seller shall identify such matters referenced in clauses (i)-(iii) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Unit(s) or the Milestone Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that conditions precedent and the milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a permit requirement, or compliance therewith, with respect to which there is a dispute over the interpretation of a law or regulation, any organized public opposition to the granting of a necessary permit, or any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, in each case which in Seller’s reasonable opinion could reasonably be expected to materially threaten or prevent commercial operation of the Unit(s) by the start of the Delivery Period;

(ii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to achieve commercial operation of the Unit(s) by the start of the Delivery Period;

(iii) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form Monthly Progress Report to Buyer, together with all attachments and exhibits.

**Major activities to be performed for each aspect of the Project during the current calendar month.**

Please provide a brief summary of the major activities to be performed for each of the following aspects of the Unit(s) during the current calendar month, including any activity, event, or occurrence which may have a material adverse impact on the construction of the Unit(s) or completion of the Unit(s) on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller’s inability to achieve a milestone date:

**Design**

**Engineering**

**Major Equipment procurement**

**Construction**

**Milestone report**

**Permitting**

**Major activities scheduled to be performed in the previous calendar month but not completed as scheduled.**

**Design**

**Engineering**

**Major Equipment procurement**

**Construction**

**Milestone report**

**Permitting**

**Overall assessment of the Project status.**

Please provide a brief summary of your assessment of the status and progress of each of the following aspects of the Unit(s):

**Design**

**Engineering**

**Major Equipment procurement**

**Construction**

**Milestone report**

**Permitting**

**Exhibit 1: Progress Curve.**

The progress curve which shows the progress achieved on the construction of the Unit(s) through the current month against the current Monthly Progress Report is included herewith as Exhibit 1.

**Exhibit 2: Photos.**

The photos included with this Exhibit 2 indicate construction progress to-date at the Unit(s) site.

**Safety and Health Reports**

**Any work stoppage from the previous calendar month:**

**Work stoppage impact on construction of the Project:**

I, \_\_\_\_\_\_\_\_\_\_\_, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in the attached \_\_\_\_\_\_\_\_’s Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Unit(s) as of the date specified below.

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_