

**ENHANCED COMMUNITY RENEWABLES PROGRAM  
RIDER AND AMENDMENT TO THE RENEWABLE AUCTION MECHANISM  
POWER PURCHASE AGREEMENT**

*between*

**SAN DIEGO GAS & ELECTRIC COMPANY**

*and*

**[NAME OF SELLER]**

This Enhanced Community Renewables (ECR) Rider and Amendment (“ECR Rider and Amendment”) to the ECR RAM PPA (as that term is defined below) is entered into between San Diego Gas & Electric Company, a California corporation (“Buyer”), and **[Name of Seller]**, a **[Legal Status of Seller]** (“Seller”), dated as of \_\_\_\_\_, 2020 (“Effective Date”). Buyer and Seller are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used herein and not otherwise defined in this Rider shall have the meanings ascribed to such terms in the ECR RAM PPA (as that term is defined below).

**RECITALS**

The Parties enter into the ECR Rider and Amendment with reference to the following facts:

- A. Concurrently herewith, Buyer and Seller enter into that certain Green Tariff Renewable Auction Mechanism Power Purchase Agreement (as amended from time to time, the “ECR RAM PPA”), under which, among other things, Seller will sell to Buyer, and Buyer will purchase from Seller, Product upon commencement of the Delivery Term.
- B. The Parties seek to modify the ECR RAM PPA with this ECR Rider and Amendment (together, the “Agreement”) in order to incorporate provisions related to the Enhanced Community Renewables program *[If DERP applies, add: and to permit Distributed Energy Resource Providers as defined by the CAISO Tariff (“DERP”)]*.
- C. *[If DERP applies, add: The CPUC in D. 16-05-006, O.P. 5, ordered that at such time as the California Independent System Operator expanded market eligibility to sub-500 kilowatt projects, the Enhanced Community Renewables projects procurement should include eligibility for to such projects. The Federal Energy Regulatory Commission ordered on June 2, 2016, that the California Independent System Operator allow for market participation by providers of aggregations of distributed sub-500 kilowatt energy resources.]*

**AGREEMENT**

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the ECR RAM PPA as follows:

*[If DERP applies, add: This ECR Rider and Amendment permits Seller to aggregate Distributed Energy Resources (DER), as such term is defined by the CAISO Tariff, to form one “Project” with one CAISO Resource ID (as such term is defined in the CAISO Tariff) under this Agreement. All references to “Project” shall refer to the resources in the aggregate. Except for the generation resource specific terms contained in this ECR Rider and Amendment, all provisions of the Agreement pertaining to a Project,*

including but not limited to scheduling, Delivery Point, excess deliveries from Article 4 of the ECR RAM PPA, Guaranteed Energy Production, CAISO charges, and Non-Availability Charges shall apply to the Project in the aggregate. Seller shall provide Buyer with all information necessary to implement this Agreement for each DERP resource, including:

- (a) **[INSERT** name of substation or method of identifying the location of interconnection to Transmission Provider’s electric system. First point of interconnection must be within Buyer’s service territory.] All resources composing the Project must have and maintain a valid interconnection agreement applicable to DERPs.
- (b) **[INSERT** Information for identifying [Distributed Energy Resource Aggregation] location on CAISO-Controlled Grid for DERP resources.]. Seller shall not modify or change the location of any resource composing the Project without Buyer’s prior written consent.
- (c) **[INSERT** capacity and all other production information for each resource composing the Project.]
- (d) Execute and maintain all CAISO and CPUC agreements, and all interconnection related agreements, including **[INSERT]**, related to the Project, DERP providers and each resource composing the Project under this Agreement.

a. All exhibits shall include resource specific detail.]

1. The following changes are made to Section 1.1:

a. Delete the definition of Commercial Operation Date and replace with the following:

“Commercial Operation Date” means the first calendar day of the month following the date on which Seller achieves Commercial Operation for the Project. ***[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete and insert:*** “Commercial Operation Date” means the later of (a) the first calendar day of the month following the date that is thirty (30) days after the date of satisfaction or waiver of the Condition Precedent in Section 2.3(a) or (b) [insert date].”]

b. ***[If DERP applies, add:*** Delete the definition of Project and replace with the following:

“Project” means the [total aggregation of each and every] [insert technology] resource, the Site(s) at which the [resource is or resources are] located, the utility interconnection facilities up to the point of change in ownership to the applicable utility’s facilities, and the other assets, tangible and intangible, that compose the resources as more particularly described on Exhibit A.]

c. The following defined terms are added, in alphabetical order, to Section 1.1:

“Community Interest” means an amount of customers who demonstrate interest in Subscription to the Project through (i) documentation that individuals within this pool of customers have committed to enroll in thirty percent (30%) of a Project’s Capacity, in the form of the Appendix K-1, or (ii) documentation that individuals within this pool of customers have provided expressions of interest in the project, in the form of the Appendix K-2, sufficient to reach a fifty-one percent (51%) subscription rate.

“Customer” means a bundled utility customer in Buyer’s service territory who meets the eligibility requirements and /or (i) receives service pursuant to Schedule ECR and (ii) enters into a CSA, on a location-by-location basis, with Seller.

“Customer-Seller Agreement” or “CSA” means that agreement to be executed between Customer and Seller in order for Customer to Subscribe to Seller’s Facility, which shall be subject to those

requirements set forth within Section 13 of this Agreement. Buyer shall not be a party to, and is prohibited from requesting pricing information contained in, the CSA.

“Default Load Aggregation Point” or “DLAP” has the meaning set forth in the CAISO Tariff.

“Default Load Aggregation Point Price” or “DLAP Price,” as determined by the CAISO, means the hourly Integrated Forward Market DLAP Locational Marginal Price for the applicable Transmission Access Charge Area, as defined in the CAISO Tariff.

“Disclosure Documents” means those disclosure documents required by Green-e<sup>®</sup> Energy to be provided by Seller to Customers and potential Customers, as they may be amended, supplemented or replaced from time to time, as set forth on the Green-e<sup>®</sup> Energy website at [http://green-e.org/verif\\_docs.html](http://green-e.org/verif_docs.html) or any successor webpage.

“ECR Tariff” means Buyer’s Schedule ECR Enhanced Community Renewables Tariff, as may be amended from time to time, as posted on Buyer’s website at <http://www.sdge.com>.

“FTC” means the Federal Trade Commission.

“FTC Green Guides” means those guiding documents published on the FTC website intended to provide guidance on 1) general principles applicable to environmental marketing claims, 2) how consumers are likely to interpret particular claims and how marketers can substantiate these claims, and (3) how marketers can qualify their claims to avoid deceiving customers.

“Green-e<sup>®</sup> Energy” means the national certification program for renewable energy administered by the Center for Resource Solutions, as such program may be amended, supplemented or otherwise changed from time to time, and about which information can be found at <http://www.green-e.org/> or any successor webpage.

“Minimum Subscription Requirement” has the meaning set forth in Section 3.1(f)(iii).

“Renewable Energy Credit Market Price” means \$10/MWh, pursuant to D.16-05-006 as may be amended from time to time.

“Subscribed Capacity” has the meaning set forth in Section 3.1(f)(i).

“Subscribed Delivered Energy” means the quotient of Subscribed Capacity divided by Contract Capacity, multiplied by Delivered Energy in all hours for the TOD Period being calculated, measured in MWh.

“Subscription”, “Subscribe”, “Subscribed” and other grammatical variations thereof means:

a) In the case of a capacity-based subscription business model employed in the CSA, the subscription that a Customer has signed up for, expressed in kW.

b) In the case of an energy-based subscription business model employed in the CSA, the subscription that a Customer has signed up for (expressed in kWh), multiplied by the Contract Capacity (expressed in kW), divided by the Contract Quantity (expressed in kWh/year), multiplied by 12 months/year, the product of which shall be equal to the Subscription of the Customer, expressed in kW.

Example: Subscription = Load x Contract Capacity / Contract Quantity x 12 months

“Subscription Information and Bill Credit Instructions” mean the information required to be provided by Seller to Buyer in accordance with Section 3.1(m) as set forth in the form provided in Appendix J.

“Unsubscribed Capacity” has the meaning set forth in Section 3.1(f)(ii).

“Unsubscribed Delivered Energy” means the quotient of Unsubscribed Capacity divided by Contract Capacity, multiplied by Delivered Energy in all hours for the TOD Period being calculated, measured in MWh.

“Unsubscribed Energy Price” means the DLAP Price plus the Renewable Energy Credit Market Price.

- d. ***[If DERP applies:*** The following definitions are modified as follows:
  - i. In the definition of Delivered Energy, replace reference to “CAISO revenue meter” with “CAISO approved DERP meter”.
  - ii. In the definition of Electrical Losses, replace reference to “CAISO revenue meter” with “CAISO approved DERP meter”.]
2. Insert the new Section 2.3(c) after Section 2.3(b) as follows:
  - (c) Seller shall demonstrate to Buyer its satisfaction of the Community Interest requirement, in the form of Appendix K-1 form of Commitment to Enroll or Appendix K-2 Form of Expression of Interest as of the Commercial Operation Date.
3. ***[If DERP applies, add:*** Insert the phrase “the aggregated resources composing the Project” immediately after the phrase “a refundable cost for” in Section 2.3(b)(ii).]
4. Insert the following subsections after Section 3.1(f):
  - (i) Subscribed Capacity. The aggregate Subscription level of all Customers with Subscriptions to the Project for each month represents the portion of the Contract Capacity that is Subscribed for the Project (“Subscribed Capacity”).
  - (ii) Unsubscribed Capacity. The Contract Capacity less the Subscribed Capacity for each billing month represents the portion of the Contract Capacity that is Unsubscribed for the Project (“Unsubscribed Capacity”).
  - (iii) Seller’s Minimum Subscription Requirement. The minimum Subscribed level required for each month of a Contract Year for the Project shall be as follows (“Minimum Subscription Requirement”):

<b>Year of Operation</b>	<b>Minimum Subscription Requirement</b>
First Contract Year	50%
Second Contract Year	75%
Third Contract Year	95%
Remaining Delivery Term	95%

Provided, that if the Project is below the Minimum Subscription Requirement, a five percent (5%) margin is reasonable to account for Subscription changes in the normal course of business.”

5. Insert the following new Section 3.1(m) after Section 3.1(l):

(m) ECR Program Subscription Requirements.

Seller shall provide Buyer with Subscription Information and Bill Credit Instructions in the format set forth in Appendix J (as such Appendix J may be modified by the Buyer in its reasonable discretion to reflect updates to its business practices) setting forth, with respect to each of Seller’s Customers for the Project, the information required in Appendix J, such Subscription Information and Bill Credit Instructions to be delivered no later than sixty (60) days prior to the Commercial Operation Date and, thereafter, ten (10) Business Days after the first day of each calendar month, with respect to the prior calendar month.

Buyer shall confirm in writing that it has verified Customer’s Subscription requirements, with respect to each Subscribed Customer listed in Seller’s Subscription Information and Bill Credit Instructions delivered pursuant to Section 3.1(m)(i) above.

Customer Subscriptions from the residential sector must be in an amount equal to or greater than one-sixth (1/6) of load. If Seller does meet the one-sixth (1/6) residential load requirement, it shall cease enrolling non-residential participants until it has enough residential participants to meet the requirement. Seller may enroll new Subscribers to backfill for Customer attrition during the Delivery Term.

Customer’s subscription also must be sized to meet at least 50% of the customer’s energy demand, and may meet up to 100% of demand (not to exceed one hundred twenty percent (120%) of such Customer’s forecasted annual consumption, as such consumption is reasonably determined by Buyer based on historical usage data), subject to the following limits:

(A) Customer’s Minimum Subscription: the Subscription amount for each Customer is projected to be in an amount of energy per year equal to or greater than: (x) one hundred (100) kWh per month on average, calculated on an annual basis, or (y) twenty-five percent (25%) of such Customer’s forecasted annual consumption (“Minimum Subscription”); and

(B) Customer’s Maximum Subscription: each Customer cannot subscribe to more than two (2) MW of nameplate generating capacity for a calendar year; except, that this limitation does not apply to federal, state, or local governments, schools or school districts, county offices of education, the California Community Colleges, the California State University, or the University of California, in which case such entities may exceed the two (2)

MW cap provided that no single entity, its affiliates or subsidiaries Subscribes to more than twenty percent (20%) of any single calendar year's total cumulative rated generating capacity ("Maximum Subscription").

6. Insert the following new Section 3.1(n) after Section 3.1(m):

(n) Customer Service Agreement. Seller shall enter into a CSA with each Customer with the following required provisions:

(C) An outline detailing the program structure of the ECR Tariff, including the bill credit mechanism and a statement that Buyer is not a party to, or third party beneficiary of, the CSA or the transactions between Seller and Customer, other than as a conduit for bill credits pursuant to Seller's Subscription Information and Bill Credit Instructions;

(D) The benefits and risks to Customer of subscribing to the Facility, including any termination of the PPA or termination fees that may be assessed by Seller or Buyer, and that Customer should not expect to receive bill credits in excess of the amount of consideration it provides to Seller under the CSA;

(E) Customer acknowledgment of the risks associated with participating in wholesale energy markets;

(F) Customer acknowledgment that it should not have any expectation of profits in deciding to enter into the CSA;

(G) Customer acknowledgment that it will only receive bill credits to the extent the Project actually generates Energy and Seller provides the correct Subscription Information and Bill Credit Instructions to Buyer as specified in Section 3.7;

(H) The CSA will automatically terminate upon termination or expiration of this Agreement;

(I) Customer acknowledgment that Buyer is not an issuer or underwriter under California or federal securities laws with respect to the Project, and that Buyer is not making an offer to sell or selling any securities whatsoever;

(J) All disputes (including those related to bill credits) will be handled between the Seller and Customer pursuant to the dispute resolution provisions in the CSA;

(K) Customers must enroll with Buyer's ECR Tariff as a condition to being eligible to receive bill credits;

(L) Customers must un-enroll from Buyer's ECR Tariff if Customer no longer wishes to subscribe to the Project; Customers cannot transfer their Subscriptions to other parties;

(M) Customers may not subscribe for more than 120% of their forecasted annual load, as reasonably determined by Buyer based on historical usage data;

(N) Customer Subscription payments to Seller, if any, are refundable until the Commercial Operation Date has been achieved, and Customer subscriptions are portable within Buyer's territory upon the Execution Date;

(O) Seller shall notify Customer in the event of Seller's imminent bankruptcy or insolvency, or if foreclosure proceedings are initiated on the Project;

(P) Disclosure that the Customer Subscription may be considered a "security" issued by Seller under federal or state law;

(Q) Customer is not guaranteed any energy production from the Project;

(R) Information describing Green-e® Energy and what requirements Seller is subject to in order to provide Customers with Green-e® Energy product;

(S) A description of Customer access rights to the Site and the Facility, if any;

(T) Seller and Buyer shall share Customer information amongst themselves for purposes of billing and credits, program eligibility and verifying participation and that Buyer and Seller shall maintain the confidentiality of Customer information;

(U) Seller's customer service department must respond to Customer inquiries within two (2) Business Days after a Customer request;

(V) Seller shall indemnify Customers for claims arising from or related to Seller's construction, operation or financing of the Project, including liens of any type, mortgages, stop notices, and claims for bodily injury, death or property damage or destruction;

(W) Seller will provide Buyer with Subscription Information and Bill Credit Instructions related to the Subscribed Capacity, and Seller shall indemnify Buyer for all related claims and billing disputes between Customer and Seller. All bill credits to Customer shall be subject to set-off and counterclaim by Buyer under Seller's power purchase agreement with Buyer;

(X) A Seller transfer or sale of the Project to another entity will be subject to Buyer's consent and the transferee must (i) accept all of Seller's obligations under the power purchase agreement between Buyer and Seller, including all duties, liabilities and indemnities, and (ii) either enter into new CSAs containing same terms and conditions as the original CSAs with existing Customers, or accept assignment of the existing CSAs with existing

Customers. In addition, Seller shall provide Customers with notice of any such transfer or sale of the Project;

(Y) Seller shall notify Customers of any proposed modifications to the Project and provide Customers adequate time to withdraw their Subscription to the Project, subject to any applicable termination provisions in the ECR Tariff, due to any such proposed modifications;

(Z) A Customer's minimum Subscription must be projected to be an amount of energy per year equal to or greater than: (x) 100 kWh per month on average, calculated on an annual basis or (y) twenty five percent (25%) of such Customer's load;

(AA) Within sixty (60) days after the Commercial Operation Date, Seller must provide completed Disclosure Documents and a statement that Seller is required by Green-e® Energy to provide updated Disclosure Documents to Customer on an annual basis;

(BB) Seller will not make any statements or representations in the CSA or its marketing materials implying that renewable energy is being used or delivered to anyone unless Seller knows that Renewable Energy Credit ownership supports such statements;

(CC) Seller representation that any electricity, stripped of Renewable Energy Credits is null power and no longer renewable and that, due to change of law provisions in the power purchase agreement between Buyer and Seller, power delivered may cease to be renewable;

(DD) Seller covenants not to claim the Renewable Energy Credits associated with any Delivered Energy;

(EE) Seller obligation regarding transfer and chain of custody of Renewable Energy Credits;

(FF) Seller shall provide Customer notice of any direct change of control of Seller (whether voluntary or by operation of Law); and

(GG) Seller shall disclose to Customers whether or not Seller will pursue Full Capacity Deliverability Status for the Project and the effects of achieving or not achieving Full Capacity Deliverability Status on the amount Customers will receive in bill credits.

Prior to or upon the Execution Date, Seller shall deliver to Buyer an original legal opinion, in form and substance acceptable to Buyer, and addressed to Buyer. The legal opinion shall state that the transactions between the Customers and Seller: (x) do not involve the offer or sale of "securities" under California or federal law, or (y) to the extent that such transactions involve the offer or sale of securities under California or federal law, the transactions, (i) involve the offer or sale of securities that are registered under federal securities law and exempt from qualification under California securities law, (ii) involve the offer or sale of securities that are qualified under federal securities law and qualified under



California securities law, or (iii) involve the offer or sale of securities that are exempt from registration under federal securities law and are qualified under California securities law, or (iv) involve the offer or sale of securities exempt from registration under federal securities law and exempt from qualification under California securities law, as applicable. The legal opinion may not contain any exceptions or qualifications unacceptable to Buyer in its reasonable discretion. The Seller must submit to Buyer an attestation from an officer of Seller that the fact certificate provided by an officer of the Seller to the law firm issuing the legal opinion is true and complete and that Seller's business model with Customers is, and throughout the Delivery Term will be, as described in the legal opinion."

7. ***[If DERP applies, add:*** Replace all references to "CAISO revenue meter" with "CAISO approved DERP meter" in Section 3.6.]
8. Insert the following new Section 3.11 after Section 3.10:

"3.11 Green-e<sup>®</sup> Energy Certification. Throughout the Term, Seller must comply with Green-e<sup>®</sup> Energy eligibility criteria and requirements in its marketing materials and the CSA, throughout the Term and surviving the expiration of the Agreement, Seller must disclose requested information to the Buyer and/or Green-e<sup>®</sup> Energy for Green-e<sup>®</sup> Energy certification, including but not limited to:

- (a) Agreeing to provide Green-e<sup>®</sup> Energy certified resources to all Customers;
- (b) Agreeing to abide by Green-e<sup>®</sup> Energy requirements and best practices, as specified on the Green-e<sup>®</sup> Energy website;
- (c) Ensuring that all marketing of and disclosures relating to the Project is accurate and in compliance with the FTC and the FTC Green Guides, ECR Tariff and Green-e<sup>®</sup> Energy requirements, Attachment 1 of the CPUC's CCA Code of Conduct, and best practices;
- (d) Maintaining a webpage with disclosures about the Project, Seller's customer service contact information, and links to both Buyer's ECR webpage and the Green-e<sup>®</sup> Energy website;
- (e) Completed Disclosure Documents to each potential Customer prior to signing CSA with a customer and in a welcome packet distributed, sixty (60) days prior to the Commercial Operation Date and annually thereafter (and in each case with a copy to Buyer), along with a statement that such Disclosure Documents are required by Green-e<sup>®</sup> Energy, which shall include, without limitation: (i) amount of energy, in kWh, that Customer has been provided from the Project; (ii) price per kW or kWh; (iii) kW or kWh contracted for (option to also include percentage of Facility's output); (iv) the Term; (v) renewable resource mix; (vi) Facility location; (vii) Seller's contact information; (viii) disclaimer stating that capacity does not guarantee a certain amount of output and output may vary (if selling in kW); (ix) include an estimated output in kWh for each Customer's Subscription (if selling in kW); (x) include the average kW needed to power a home in the region (if selling in kW); (xi) Seller's customer service contact information; (xii) link to Buyer's ECR webpage; (xiii) all terms and conditions of Customer's Subscription; (xiv) statement that these disclosures are required by Green-e<sup>®</sup> Energy and information about

Green-e® Energy certification and link to Green-e® Energy's website: [www.green-e.org/energy](http://www.green-e.org/energy); and

(f) Seller to provide all forms, disclosure and other information to Buyers or its auditors for annual verification and audit."

9. Section 4.1(a) is amended by deleting the beginning of the first sentence through the phrase "provided, however, that" immediately below the table and replacing the text with the following:

"The price for the Bundled Green Energy and Deemed Bundled Green Energy, if any, that is delivered to Buyer in each month that the Project meets the Minimum Subscription Requirement in any Contract Year shall be as follows ("Energy Price"):

<u>Contract Year</u>	<u>Energy Price (\$/MWh)</u>

provided, that if in any delivery month the Project does not meet the Minimum Subscription Requirement, the price for the portion of Bundled Green Energy and Deemed Bundled Green Energy, if any, delivered to Buyer from Unsubscribed Capacity

of the Project shall be the lesser of (i) the Unsubscribed Energy Price, and (ii) the Energy Price; provided further that:”

10. Delete Section 4.1(c) in its entirety and replace with the following:

(c) *[For FCDS bids (excluding ECR Projects located in Imperial Valley):* Monthly Energy Payment.

(i) Monthly Payment for Projects that Achieve the Minimum Subscription Requirement. During each month of the Delivery Term, if the quotient of the average billing month Subscribed Capacity divided by the Contract Capacity is equal to or greater than the Minimum Subscription Requirement for the corresponding billing month, then the payment for Unsubscribed Delivered Energy for each month during which Seller has achieved “Full Capacity Deliverability Status”, as defined in the CAISO Tariff (“FCDS”) as determined by the CAISO, shall be an amount equal to the sum for each hour in the month of the product of the Energy Price times the Bundled Green Energy plus Deemed Bundled Green Energy, if any, in each hour; except that, for each month during which Seller has not achieved FCDS as determined by the CAISO, then the payment related to Unsubscribed Delivered Energy shall be an amount equal to the sum for each hour in the month of the product of (i) the Energy Price minus *[insert the \$/MWh equal to the Deliverability Value as defined in the RFO document]* (“Deliverability Value”) times (iii) the sum of Bundled Green Energy plus Deemed Bundled Green Energy (together, the “Monthly Energy Payment”).

Monthly Energy Payment to Seller assigned to Customers for Subscribed Delivered Energy =  $\sum$  (Energy Price x (Bundled Green Energy + Deemed Bundled Green Energy) x (Subscribed Capacity/Contract Capacity))

Monthly Energy Payment to Seller from Buyer for Unsubscribed Delivered Energy for months that Seller has obtained FCDS =  $\sum$  (Energy Price [ – Deliverability Value, only if Seller has not achieved FCDS] x (Bundled Green Energy + Deemed Bundled Green Energy) x (Unsubscribed Capacity/Contract Capacity))

(ii) Monthly Payment for Projects that do not Achieve the Minimum Subscription Requirement. During each month of the Delivery Term, if the quotient of the average billing month Subscribed Capacity divided by the Contract Capacity is less than the applicable Minimum Subscription Requirement, then the payment for Unsubscribed Delivered Energy for each month shall be an amount equal to the sum for each hour in the month of the product of the lesser of (i) the Unsubscribed Energy Price, and (ii) the Energy Price, less the Deliverability Value if the Project has not achieved FCDS, multiplied by the sum of Bundled Green Energy plus Deemed Bundled Green Energy (together, the “Monthly Energy Payment”).

Monthly Energy Payment to Seller assigned to Customers for Subscribed Delivered Energy =  $\sum$  (Energy Price x (Bundled Green Energy + Deemed Bundled Green Energy) x (Subscribed Capacity/Contract Capacity))

Monthly Energy Payment to Seller from Buyer for Unsubscribed Delivered Energy for months that Seller has obtained FCDS =  $\sum$  (the lesser of (i) the Unsubscribed Energy Price and (ii) the Energy Price [ – Deliverability Value,

only if Seller has not achieved FCDS]) x (Bundled Green Energy + Deemed Bundled Green Energy) x (Unsubscribed Capacity/Contract Capacity))

(iii) Seller shall assign payment for Subscribed Delivered Energy from Subscribed Capacity to its Customers in the CSA, and payment for the Subscribed Delivered Energy shall be applied as a bill credit to Seller's Customers. Payment for the Unsubscribed Delivered Energy from Unsubscribed Capacity, net amounts owed to Buyer from Seller, shall be paid to Seller from Buyer. For avoidance of doubt, if in any month Seller does not provide Subscription Information and Bill Credit Instructions pursuant to Section 3.1(m), Buyer shall not apply Customers' bill credit or pay Seller's Monthly Energy Payment until such time as Seller provides its Customer Subscription Information and Bill Credit Instructions for that month.]

***[For Energy Only bids and ECR Projects located in Imperial Valley: Monthly Energy Payment.***

(i) Monthly Payment for Projects that Achieve the Minimum Subscription Requirement. During each month of the Delivery Term, if the quotient of the billing month Subscribed Capacity divided by the Contract Capacity is greater than the Minimum Subscription Requirement for the corresponding billing month, if the quotient of the billing month Subscribed Capacity divided by the Contract Capacity is greater than the Minimum Subscription Requirement for the corresponding billing month, then the payment applicable for Unsubscribed Delivered Energy from the Project shall be an amount equal to the sum for each hour in the month of the product of the Energy Price times the sum of Bundled Green Energy plus Deemed Bundled Green Energy in each hour ("Monthly Energy Payment").

Monthly Energy Payment to Seller assigned to Customers for Subscribed Delivered Energy =  $\sum (\text{Energy Price} \times (\text{Bundled Green Energy} + \text{Deemed Bundled Green Energy}) \times (\text{Subscribed Capacity}/\text{Contract Capacity}))$

Monthly Energy Payment to Seller from Buyer for Unsubscribed Delivered Energy =  $\sum (\text{Energy Price} \times (\text{Bundled Green Energy} + \text{Deemed Bundled Green Energy}) \times (\text{Unsubscribed Capacity}/\text{Contract Capacity}))$

(ii) Monthly Payment for Projects that do not Achieve the Minimum Subscription Requirement. During each month of the Delivery Term, if the quotient of the average billing month Subscribed Capacity divided by the Contract Capacity is less than the applicable Minimum Subscription Requirement, then the payment for Unsubscribed Delivered Energy shall be an amount equal to the sum for each hour in the month of the product of the lesser of (i) the Unsubscribed Energy Price, and (ii) the Energy Price multiplied by the sum of Bundled Green Energy plus Deemed Bundled Green Energy (together, the "Monthly Energy Payment").

Monthly Energy Payment to Seller assigned to Customers for Subscribed Delivered Energy =  $\sum (\text{Energy Price} \times (\text{Bundled Green Energy} + \text{Deemed Bundled Green Energy}) \times (\text{Subscribed Capacity}/\text{Contract Capacity}))$

Monthly Energy Payment to Seller from Buyer for Unsubscribed Delivered Energy =  $\sum (\text{the lesser of (i) the Unsubscribed Energy Price and (ii) the Energy Price}) \times$

(Bundled Green Energy + Deemed Bundled Green Energy) x (Unsubscribed Capacity/Contract Capacity))

(iii) Seller shall assign payment for Subscribed Delivered Energy from Subscribed Capacity to its Customers in the CSA, and payment for the Subscribed Delivered Energy shall be applied as a bill credit to Seller's Customers. Payment for the Unsubscribed Delivered Energy from Unsubscribed Capacity, net amounts owed to Buyer from Seller, shall be paid to Seller from Buyer. For avoidance of doubt, if in any month Seller does not provide Subscription Information and Bill Credit Instructions pursuant to Section 3.1(m), Buyer shall not apply Customers' bill credit or pay Seller's Monthly Energy Payment until such time as Seller provides its Customer Subscription Information and Bill Credit Instructions for that month.]”

11. Delete Section 6.1 in its entirety and replace with the following:

“6.1. Billing and Payment. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, [*Where Seller is the SC:* Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the invoice; and (c) an invoice, in a format reasonably specified by Buyer indicating the payments associated with the Unsubscribed Delivered Energy,] [*Where Buyer is the SC:* Buyer shall provide to Seller an invoice indicating the payments associated with the Unsubscribed Delivered Energy and] covering the services provided in the preceding month determined in accordance with Article 4 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after receipt of the invoice; except, that payments to Seller under this Agreement of each undisputed invoice related to the Subscribed Delivered Energy shall be made by Buyer in the form of bill credits to Customers in accordance with the Seller's Subscription Information and Bill Credit Instructions, and Seller hereby assigns any right to receive all such payments in respect of Subscribed Delivered Energy to such Customers. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail. Each invoice will be adjusted by any amounts owed by or to Seller under this Agreement, on or before the last Business Day of the second month from which Buyer receives an invoice from Seller; provided, that Buyer shall have the right, but is not obligated, to apply any amounts due to Buyer from Seller for any charges incurred under this Agreement, for past due bills for electric service or for Buyer services, towards any amount owed to Seller under this Agreement. In the event Buyer applies any amounts due to Buyer from Seller towards an invoice issued by Seller, Buyer shall provide an explanation of the amounts Buyer has applied towards Seller's invoice. Buyer shall make payment of each undisputed invoice related to the Unsubscribed Capacity directly to Seller. Buyer and Seller acknowledge that payment to Seller under this Agreement of each undisputed invoice related to the Subscribed Delivered Energy shall be made by Buyer in the form of bill credits to Customers in accordance with the Seller's Subscription Information and Bill Credit

Instructions, and Seller hereby assigns any right to receive all such payments in respect of Subscribed Delivered Energy to such Customers. Notwithstanding any other provision in this Agreement, Buyer is not obligated to provide a bill credit to any Customer that does not meet the requirements of this Agreement and the ECR Tariff or if Buyer determines, in its reasonable discretion, that the information contained in the Subscription Information and Bill Credit Instructions is incorrect. Retroactive changes to Subscription Information and Bill Credit Instructions will not be permitted.”

12. Delete Section 6.3 in its entirety and replace with the following:

“6.3 Netting of Payments. Any amounts owed by Seller under this Agreement shall not be included in Seller’s Subscription Information and Bill Credit Instructions, but shall be included in amounts payable directly to or from Seller. Each invoice will be adjusted by any amounts owed by or to Seller under this Agreement, on or before the later of the last Business Day of the second month from which Buyer receives an invoice from Seller; provided, that Buyer shall have the right, but is not obligated, to apply any amounts due to Buyer from Seller for any charges incurred under this Agreement, for past due bills for electric service or for Buyer services, towards any amount owed to Seller under this Agreement. In the event Buyer applies any amounts due to Buyer from Seller towards an invoice issued by Seller, Buyer shall provide an explanation of the amounts Buyer has applied towards Seller’s invoice. Buyer shall make payment of each undisputed invoice related to the Unsubscribed Capacity directly to Seller.”

13. Delete Section 10.2(c) entirely and replace with the following:

“(c) Seller, and, if applicable, its successors, represents, warrants and covenants that throughout the Delivery Term: (i) the Delivered Energy qualifies and is Green-e<sup>®</sup> Energy eligible; (ii) Seller shall comply with the Green-e<sup>®</sup> Energy requirements and best practices as updated from time to time by Green-e<sup>®</sup> Energy; (iii) Seller shall provide all forms, disclosures and other documentation required by Buyer and its auditors in connection with the annual Green-e<sup>®</sup> Energy verification and audit; (iv) Seller shall provide to Buyer a copy of all annual Disclosure Documents that it provides to Customers; and (v) Seller shall provide Buyer with a completed “Green-e<sup>®</sup> Energy Attestation From Generator Participating In A Tracking System” (or successor form available on Green-e<sup>®</sup>’s website) promptly when required by Buyer, and (vi) Seller shall provide Buyer with Green-e<sup>®</sup> Energy Host attestations as they are requested.”

14. Insert new Sections 10.2(d) – 10.2(m) as follows:

(d) Seller, and, if applicable, its successors, represents, warrants and covenants that throughout the Delivery Term, Seller has not entered and will not enter into any other agreement with any party for the sale of Product produced by the Project, other than Customers in accordance with the CSA and with ECR Tariff.

(e) Seller, and, if applicable, its successors, represents, warrants and covenants that throughout the Delivery Term, that prior to the Execution Date and during the Term, (a) Seller has not and will not enter into CSAs for Subscribed Capacity exceeding, in the aggregate, one hundred percent (100%) of the Contract Capacity; and (b) Seller has not and will not enter into a CSA with any individual Customer for a Subscription exceeding 2 MW (except in the case of federal, state or local governments, schools or school districts, county offices of education, any of the California Community Colleges, the California State University or the University of California).

(f) Seller, and, if applicable, its successors, represents, warrants and covenants that throughout the Delivery Term, the Subscription Information and Bill Credit Instructions required under Section 3.1(m) shall be accurate and complete. If Seller becomes aware of incorrect information contained in any current or previously submitted Subscription Information and Bill Credit Instructions, Seller shall provide Buyer with updated Subscription Information and Bill Credit Instructions. Buyer shall not be liable for any action it takes or fails to take based on incorrect information contained in inaccurate or incomplete Subscription Information and Bill Credit Instructions.

(g) Seller, and, if applicable, its successors, represents, warrants and covenants that prior to the Execution Date and throughout the Term: (i) Seller has complied with and shall continue to comply with the marketing plan requirements of the ECR Tariff and Green-e<sup>®</sup> Energy, (ii) all marketing by Seller shall be accurate and in compliance with the Federal Trade Commission Green Guides, (iii) any changes to the marketing plan shall be submitted to Buyer for review prior to Seller's use of such materials, (iv) Seller shall maintain an internet website dedicated to the Project containing disclosures about the Project required by Green-e<sup>®</sup> Energy, including a link to Buyer's ECR Tariff webpage, a link to the Green-e<sup>®</sup> Energy website, and customer service contact information; and (v) Seller has received from Buyer and has read Attachment 1 of the CPUC's CCA Code of Conduct decision (D.12-12-036) and has not and will not circumvent it.

(h) Seller, and, if applicable, its successors, represents, warrants and covenants that throughout the Delivery Term, Seller has and shall continue to incorporate in each CSA it enters into with Customers the provisions required to be included in the CSA as identified in Section 3.1(m)(iv).

(i) Seller, and, if applicable, its successors, represents, warrants and covenants that throughout the Delivery Term, Seller shall not use Buyer's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, without Buyer's prior written consent.

(j) Seller acknowledges that the Subscriptions it sells may be considered securities under federal or California law and, accordingly, has retained its own legal counsel to provide advice on securities law matters.

(k) Seller, and, if applicable, its successors, represents, warrants and covenants that throughout the Delivery Term that the Project shall comply with the requirements of the California Air Resources Board's Voluntary Renewable Electricity Program, and Seller shall provide Buyer with all documents necessary to enable Buyer to retire greenhouse gas allowances on behalf of Customers in compliance with the Voluntary Renewable Electricity Program.

(l) ***[If DERP applies, add: [Include additional DERP-related representations.]]***

(m) With respect to the legal opinion delivered pursuant to Section 3.1(m), Seller hereby represents and covenants that:

(i) The lawyer primarily responsible for the issuance of the opinion has, within the last eight (8) years, practiced federal and California securities law as a significant portion of their practice (meaning at least five (5) full-time years), and such experience including registering or qualifying offerings or sales of securities, effecting private placements of securities, and/or advising issuers or sellers of securities with respect to exemptions from qualifications and registration requirements;

- (ii) The lawyer primarily responsible for the issuance of the opinion is licensed to practice law in California and the lawyer's license is active and not under suspension; and,
  - (iii) The law firm issuing the opinion carries a minimum of \$10 million in professional liability insurance coverage
- 15. ***[If DERP applies, add:*** Insert Section 10.3(b)(vi) after Section 10.3(b)(v) as follows:  
  
“(e) *[Include other appropriate DERP-related covenants.]*”
- 16. Insert the following at the end of Section 11.2(a):  
  
“, or in connection with Seller's Subscription Information and Bill Credit Instructions, subscriptions, bill credits, disputes, violations of Law, misrepresentations made by Seller or Seller's contractors, agents, or representatives, claims relating to securities laws, or Green-e<sup>®</sup> Energy certification, or loss thereof”
- 17. Insert a new Section 13.15 after Section 3.14:  
  
“13.15 No Partnership or Joint Venture. Nothing contained in this Agreement shall be construed as creating any relationship whatsoever between Buyer and Seller, including that of partners, co-employment, or joint venture parties.”
- 18. A new Appendix J (attached hereto) is added after Appendix I.

#### MISCELLANEOUS

- (a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under this Agreement and the ECR RAM PPA .
- (b) Legal Effect. Except as expressly modified as set forth herein, the ECR RAM PPA remains unchanged and, as so modified, the ECR RAM PPA remains in full force and effect. Each of the Parties hereby represents and warrants that the representations contained in the ECR RAM PPA are true on and as of the date hereof as if made by the Party on and as of said date.
- (c) Governing Law. THIS AGREEMENT AND THE ECR RAM PPA AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS ECR RIDER AND AMENDMENT.
- (d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of such Party has authority to execute this Agreement on behalf of such Party and to bind such Party to this Agreement. Any written notice required to be given under the terms of this Agreement shall be given in accordance with the terms of the Agreement.



- (f) Effective Date. This Agreement shall be deemed effective as of the Execution Date.
- (g) Further Agreements. This Agreement shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

*[Remainder of Page Left Intentionally Blank.]*

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

<b>[SELLER],</b> a <b>[State and form of incorporation].</b>
By:  _____
<b>[Name]</b> <b>[Title]</b>

<b>SAN DIEGO GAS &amp; ELECTRIC COMPANY,</b> a California corporation.
By:  _____
Emily C. Shults Vice President – Energy Supply

**APPENDIX J**  
**Subscribed Customer Reporting Form**

Customer Subscription details are to be provided sixty (60) days prior to the Commercial Operation Date, and afterwards, on a monthly basis to Buyer in the form attached below. Note that Seller should only fill out either (i) the “Capacity Subscribed (kW)” or (ii) the “Load Subscribed (kWh)” column, the appropriate column shall be dictated by the business model being employed by Seller pursuant to the CSA.

<b>Name</b>	<b>Service Address</b>	<b>SDG&amp;E Service Account Number</b>	<b>SDG&amp;E Meter Number</b>	<b>Capacity Subscribed (%)</b>	<b>Load Subscribed (kWh)</b>	<b>Load Served (kW)</b>

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\*\*\* End of Appendix J \*\*\*

**APPENDIX K-1**  
**Form of Commitment to Enroll**

*[INSERT STANDARD FORM]*

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*\*\*\* End of Appendix K-1 \*\*\**

**APPENDIX K-2**  
**Form of Expression of Interest**

*[INSERT STANDARD FORM]*

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*\*\*\* End of Appendix K-2 \*\*\**