

DISTRIBUTION SERVICES AGREEMENT

between

SAN DIEGO GAS & ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

DISTRIBUTION SERVICES AGREEMENT

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DISTRIBUTION SERVICES AGREEMENT

This Distribution Services Agreement is made by and between San Diego Gas & Electric Company, a California corporation (“SDG&E”, and as further defined herein, “Buyer”) And _____, a _____ company (“Seller”) as of _____ (the “Effective Date”). Seller and Buyer are referred to individually as “Party” or collectively as “Parties”.

RECITALS

- I. Buyer seeks to purchase Distribution Services as defined herein from Distributed Resources in order to defer upgrades to its distribution system.
- II. Seller desires to sell Distribution Services as defined herein to Buyer from the Project in accordance with the terms of this Agreement.

Now, therefore, in consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1. TERM; DELIVERY TERM

1.1. Term.

(a) The “Term” of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including until any compensation for Distribution Services, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Assurance is released and/or returned as applicable. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 15.1 through 15.7 (Indemnities and Insurance) and any other indemnity rights survive the end of the Term for an additional twelve (12) months after; (ii) all rights and obligations under Article Nineteen (Confidentiality) survive the end of the Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The “Delivery Term” is the period commencing on the Initial Delivery Date as set forth in Section 2.2 and continuing until _____ unless earlier terminated in accordance with the terms and conditions of this Agreement. The Initial Delivery Date will not be extended or delayed for any reason, including events of Force Majeure.

1.2. Binding Nature.

(a) Effectiveness of Agreement Prior to CPUC Approval. This Agreement shall be effective and binding as of the Effective Date, but only to the extent required to give full effect

to, and enforce, the rights and obligations of the Parties under: *[Section references to be updated based on final agreement.]*

- (i) Articles One, Eight, and Eleven through Twenty-One;
- (ii) Sections 7.1(a)(i) – (iii); 7.2 - 7.4; and
- (iii) Sections 10.3 – 10.5.

(b) Effectiveness of Agreement on and after CPUC Approval.

(i) No later than [_____] from the date on which Buyer files this Agreement with the CPUC, Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties may, in their sole discretion, renegotiate this Agreement and Buyer shall file the amended agreement with the CPUC seeking approval thereof. If, within sixty (60) days, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

(ii) This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the date on which the CPUC Approval has been obtained or waived in writing by both Parties. Unless otherwise specified, all obligations of the Parties are binding throughout the Delivery Term.

1.3. CPUC Approval Delayed. If CPUC Approval has not been obtained by the CPUC Approval deadline date set forth in Section 1.2(b)(i), then either Party may terminate this Agreement effective upon Notice to the other Party, unless the need for such CPUC Approval has been waived in writing by both Parties. Following the termination of this Agreement pursuant to this Section 1.3, neither Party shall have any obligation or liability to the other by reason of such termination.

ARTICLE 2. DELIVERY CONDITIONS

2.1. Project Development. Seller shall take all actions and obtain all approvals necessary to deliver to Buyer Distribution Services pursuant to the terms of this Agreement, which include those obligations set forth below in Section 2.2(a). Seller must complete the Delivery Conditions in accordance with Section 2.2(b).

2.2. Delivery Conditions Prior to Initial Delivery Date.

(a) The “Initial Delivery Date” shall be the date upon which Seller satisfies all the following conditions (“Delivery Conditions”) and the Product is available to Buyer:

(i) No later than thirty (30) days prior to the Initial Delivery Date, at Seller’s expense, Seller shall have secured all Governmental and grid operations approvals as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver Distribution Services at the Contract Capacity to Buyer.

(ii) No later than the Initial Delivery Date, Seller shall have posted the Delivery Term Security as required by Section 10.4(a)(ii).

(iii) No later than thirty (30) days prior to the Initial Delivery Date, Seller shall have delivered to Buyer the Safety Attestation in accordance with Section 2(a) of Appendix XIII.

(iv) No later than the Effective Date, Seller shall have submitted for Buyer's review a Project Safety Plan, which must demonstrate Seller's ability to comply with the Safety Requirements on the Initial Delivery Date and for the Delivery Term.

(v) As of the Initial Delivery Date, no Seller's Event of Default shall have occurred and remain uncured, except that an Seller shall not have an opportunity to cure Event of Default resulting from Seller's failure to meet a Critical Milestone.

(vi) As of the Initial Delivery Date, at Seller's expense, Seller or Contractor shall have developed the Project to a state sufficient to enable (A) Seller to satisfy the obligations of the Seller herein and (B) the Project to deliver Distribution Services at the Contract Capacity to Buyer.

(vii) No later than thirty (30) days prior to the Initial Delivery Date, at Seller's expense, Seller shall have installed any metering necessary to verify delivery of the applicable Distribution Services in accordance with Section 4.7 and any applicable tariffs of the Utility Distribution Company.

(viii) Seller shall have met each Critical Milestone no later than the applicable dates set forth in Appendix V.

(ix) No later than thirty (30) days prior to Initial Delivery Date, Seller has entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Distribution Owner's electric system.

(b) Seller shall Notify Buyer of the satisfaction of each Delivery Condition, and of each Critical Milestone, in accordance with this Section 2.2(b). Seller's Notices hereunder must contain sufficient documentation to demonstrate completion of the Delivery Condition or Critical Milestone, as applicable. Once all of the Delivery Conditions to the applicable Initial Delivery Date have been satisfied or waived, the Parties shall execute and exchange on the applicable Initial Delivery Date the "Initial Delivery Date Confirmation Letter" attached as Appendix IV.

2.3. Failure to Meet Delivery Conditions. If Seller fails to satisfy any of the Delivery Conditions by the deadlines set forth in Section 2.2(a) and Critical Milestones set forth in Appendix V, then a Seller's Event of Default shall be deemed to occur in accordance with Section 7.1(a)(v), and Buyer shall have no obligation to purchase any Distribution Services from Seller hereunder.

ARTICLE 3. TRANSACTION

3.1. Transaction. Subject to Section 2.3, on and after the Initial Delivery Date through the end of the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, Distribution Services exclusively from the Project at the Delivery Point(s) in the aggregate amount

of the Contract Capacity. Seller shall deliver Distribution Services to Buyer hereunder in accordance with Buyer's instructions pursuant to Section 4.8. In no event will Buyer be obligated to purchase Distribution Services prior to the Initial Delivery Date.

3.2. Distribution Services. Seller shall provide Buyer with Distribution Services exclusively from the Project. "Distribution Services" shall consist of the Project's ability to provide, and the provision of, services that are checked in Appendix II.

3.3. Contract Capacity. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits and shall deliver to Buyer for its exclusive use, Distribution Services pursuant to the terms and conditions contained herein and in a quantity equal to the Contract Capacity specified in Appendix II.

3.4. Delivery Point(s). The Delivery Point will be (i) for each Distributed Resource composing the Project that is located behind a Customer's retail meter, the point at which the Customer's electrical facilities connect to Buyer's electrical distribution facilities, and (ii) for each Distributed Resource composing the Project that is not located behind a Customer's retail meter, the point of interconnection for such Distributed Resource to Buyer's electrical distribution facilities, and in each case (i) and (ii), as defined in Appendix III. Seller shall be solely responsible for any costs or charges imposed on or associated with Distribution Services up to and at the Delivery Point(s). Buyer shall be responsible for any costs or charges imposed on or associated with Distribution Services after the Delivery Point(s).

3.5. Information Sharing and Shared Learning. Throughout the Term, Seller agrees to share meter data and any information reasonably available to Seller that Buyer reasonably deems necessary for the Buyer to plan and operate the distribution system and to prepare progress reports required by Governmental Authorities in connection with this Agreement, upon Buyer's reasonable request, with such information to be treated by Buyer as Confidential Information. Buyer shall provide Seller with reasonable advance notice of the submission of any of Seller's Confidential Information with any Governmental Authority. Seller shall provide such applicable meter data to Buyer in a format and to a platform as Notified by Buyer to Seller prior to such request. For information related to Seller's multiple uses of resources comprising the Project, Seller shall promptly provide Notice to Buyer any time Seller provides any services or products from such resources to a third party.

3.6. Third-Party Sales. Seller may sell other products, including Distribution Services in excess of the Contract Capacity, to third parties or available markets ("Third Party Sales"). Seller is solely responsible for the costs and solely entitled to the revenues associated with such Third-Party Sales.

ARTICLE 4. INTERCONNECTION & OPERATIONS

4.1. Interconnection. The Distributed Resources that compose the Project shall each be interconnected to circuits or loads or associated with load facilities that are electrically interconnected to one or more of the circuits described in Appendix III. If an interconnection agreement is required, Seller shall interconnect the Project in accordance with the requirements and terms and conditions set forth in the Utility Distribution Company's applicable tariffs, and, if applicable, the participating Transmission Owner's applicable tariffs and the CAISO tariff, in order to

safely and reliably deliver Distribution Services to Buyer. Provided the Utility Distribution Company performs in accordance with applicable tariffs, Seller shall be responsible for all delays, costs and expenses associated with such interconnection.

4.2. Interconnection Agreement. At Seller's expense, Seller shall (a) execute all necessary Interconnection Agreements, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of Distribution Services, and (c) arrange, schedule and be responsible for any and all electric service (including any Governmental Approvals required for the foregoing). At no cost or liability to Buyer, Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Utility Distribution Company's applicable tariffs, so as to be able to deliver Distribution Services to Buyer. Buyer will not bear any costs or liability under this Agreement related to interconnection or electric distribution service for the Project, regardless of whether SDG&E is the Utility Distribution Company for the Project. To the extent Seller undertakes Third Party Sales, Seller is solely responsible for executing any necessary interconnection agreements and fulfilling all contractual, metering and applicable interconnection requirements necessary to make such Third-Party Sales.

4.3. Operational Control. During the Delivery Term, Seller shall operate and maintain the Project such that the Project is able to deliver Distribution Services to Buyer in accordance with this Agreement. Notwithstanding Seller's obligations to deliver Distribution Services, Seller will have sole operational control of the Project and be solely responsible for operation and maintenance of the Project. Buyer will not bear any costs or liability related to ownership, operation, scheduling, dispatch, or maintenance of the Project. In addition, Buyer shall have no liability for any failure by Seller to comply with Utility Distribution Company tariff, including any penalties, charges or fines imposed on Seller for such noncompliance.

4.4. Failure to Comply with Restricted Periods.

(a) Seller shall operate the Project in a manner that does not cause an increase in net loading on the circuits specified in Appendix III during Restricted Periods. Whether an increase in net loading on the circuits specified in Appendix III has occurred during a particular Restricted Period will be determined by Buyer in accordance with the measurement and verification parameters set forth in Appendix VIII.

4.5. Project Site and Customers.

[Include Section 4.5 if Project is behind the meter. If the Project is in front of the meter then remove this Section 4.5]

(a) Seller shall execute all necessary forms, documentation, and agreements in necessary to secure all Sites and/or Customers necessary to deliver Distribution Services to Buyer from the Project. The terms and conditions of the agreements Seller executes for each Site, and with each Customer, as applicable, are independent of Buyer, and Buyer shall not have any responsibility or incur any liability pursuant to such agreements.

(b) By the Initial Delivery Date, Seller shall provide Buyer a list identifying all Sites and Customers, if any, composing the Project in the form set forth in Appendix III ("Site/Customer List"). For each Site and each Customer, as applicable, that compose the Project, Seller must demonstrate that such Site or Customer satisfies the criteria of Incrementality and meets

the measurement and verification requirements applicable to such Site or Customer in accordance with Section 5.2, and therefore is eligible to deliver Distribution Services hereunder. Buyer will verify to Seller which Seller-selected Sites and/or Customers, as applicable, are eligible to deliver Distribution Services hereunder in accordance with this Section 4.5(b) prior to the Initial Delivery Date.

(c) At any time during the Delivery Term, Seller may remove, replace, or add any Distributed Resources that compose the Project, provided that (i) any such change shall not modify the Distribution Services or the ability of the Project to provide Product at the Contract Capacity, (ii) any new Distributed Resources to be added to the Project are interconnected to distribution system at the locations identified in Appendix III and in accordance with the requirements of Article Four, (iii) any such change shall be made in accordance with this Section 4.5(c) and Article Eleven of this Agreement, and (iv) any such change requires the Project to complete an interconnection review and complete an updated agreement under the applicable tariff(s). No less than 15 days prior to a Delivery Month, Seller will provide Buyer an updated Site/Customer List if any Sites or Customers comprising the Project will change during such Delivery Month. For each new Site or Customer on the updated Site/Customer List, Seller must demonstrate that such Site or Customer is eligible to deliver Distribution Services hereunder in accordance with Section 4.5(b). No less than 5 days prior to such Delivery Month, Buyer will verify to Seller whether the new Sites or Customers are eligible to deliver Distribution Services hereunder in accordance with Section 4.5(b).

(d) Seller may not provide Distribution Services from a source other than the Project. At Buyer's request, Seller shall provide to Buyer all information and data necessary to confirm that Seller delivered the Distribution Services from the Project during each time period in the Delivery Term specified in Buyer's request.

4.6. Intentionally Omitted.

4.7. Metering and Communications Systems. To the extent applicable as set forth in Appendix X, Seller shall install all metering, communications systems and equipment for the Project ("Communications Systems") at Seller's sole cost and expense that is necessary to, at all times during the Delivery Term, (i) enable Seller to meet Buyer's instructions in accordance with 4.8, (ii) enable Buyer to remotely dispatch (e.g. immediately disconnect for safety and reliability) and monitor the status of the Project on an aggregate and individual resource basis, (iii) permit Buyer to have real time information access to the operations of the Project, including the ability to measure increases and decreases in real time load/production, and (iv) provide Distribution Services. All electric metering equipment and submeters, whether owned by Seller or by a third party, which are installed on Seller's side of the Delivery Point, as applicable, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Electrical Practices; provided that if the electric metering equipment test is conducted by the interconnecting utility, testing shall be conducted in accordance with the procedures and the standards generally applied by such utility. In the event that, during the Delivery Term, Buyer develops its own system that allows Buyer to exercise greater monitoring or more efficient dispatch of the Project, upon Buyer's notice Seller shall, at Seller's expense, promptly enable its Communications Systems to interface with Buyer's system such that Buyer may monitor and dispatch the Project through Buyer's system.

4.8. Scheduling. During the Operating Parameters set forth in Appendix XI, Buyer may request the Project to deliver Distribution Services as described in Appendix II at any amount up to the Contract Capacity by providing an instruction to Seller in a manner to be

determined by Buyer in its sole discretion, which may include telephonic or electronic notification. Buyer's delivery instruction will state, for each Delivery Hour covered by the delivery instruction, the quantity of the applicable Distribution Service to be delivered by Seller during such Delivery Hour.

4.9. Intentionally Omitted.

4.10. Supplier Diversity. At Buyer's request, Seller will provide information to Buyer relating to Seller's or Seller's contractor's use, during Project construction, of "Women-Owned Businesses" or "Minority-Owned Businesses" or "Disabled Veteran Business Enterprises" as defined in CPUC General Order 156, and the number of new employees hired by Seller or Seller's contractors and the number of women, minority, and disabled veterans trained or hired by Seller or Seller's contractor's as contemplated under Cal. Public Utilities Code §910(a)(8), as each such group of entities and individuals may be amended from time to time or further defined, supplemented, or superseded by applicable Law or replaced with similar designations or certifications. *[Include other covenants related to "women-owned business" or "minority-owned business" as may be applicable to the Seller's RFO bid.]*

4.11. Standards of Care. Seller shall comply with all applicable requirements of Law, Utility Distribution Company tariffs and agreements, Governmental Approvals, CARB, FERC, NERC and WECC in its scheduling, interconnection, operation and maintenance of the Project and as contemplated by this Agreement. Seller shall (a) acquire and maintain all Governmental Approvals necessary for the construction, operation, and maintenance of the Project consistent with Safety Requirements; (b) Notify Buyer of any modifications or lapse in renewal of Governmental Approvals; and (c) at Buyer's request, provide to Buyer digital copies of any Governmental Approvals. For the avoidance of doubt, Seller shall be responsible for procuring and maintaining, at its expense, all emissions credits required for operation of the Project throughout the Delivery Term in compliance with Law and to permit operation of the Project in accordance with this Agreement. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any documents, information, or instruments with respect to delivered Distribution Services reasonably necessary to enable Buyer to comply with the requirements of any Governmental Authority. Nothing hereunder shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

ARTICLE 5. TESTING AND VERIFICATION

5.1. Performance Testing.

(a) All performance tests of the Project, including Initial Performance Test and any additional procedures and protocols related to Performance Testing as agreed between Buyer and Seller required in Appendix V ("Test Procedures"), will be performed in accordance with the test procedures set forth in Appendix VIII ("Performance Test"). Seller shall bear all costs and receive all revenues, if applicable, associated with all Performance Tests.

(b) After the Initial Delivery Date and during the Delivery Term, Buyer will have the right to conduct, at Seller's sole expense, one (1) Performance Test ("Buyer Performance Test") each calendar year to demonstrate whether the Project is capable of delivering the Distribution Services at the Contract Capacity. Seller will have a right to retest the Project with a Performance Test once each calendar year after a Buyer Performance Test ("Seller Retest").

(i) If a Buyer Performance Test or Seller Retest, if applicable, demonstrates the Project is capable of delivering Distribution Services at or above 100% of the Contract Capacity, the Contract Capacity will remain the Contract Capacity;

(ii) If a Buyer Performance Test or Seller Retest, if applicable, demonstrates the Project is not capable of delivering Distribution Services at 100% or more of the Contract Capacity, an Event of Default shall occur in accordance with Section 7.1(a)(vii).

5.2. Measurement and Verification. The amount of Distribution Services the Project delivers will be measured for all purposes under this Agreement based on the Project's technology using the methodologies and parameters set forth in Appendix X.

ARTICLE 6. COMPENSATION

6.1. Contract Price. The price for Distribution Services during the Delivery Term shall be equal to the Contract Price for each Delivery Month.

<u>Month</u>	<u>Contract Price</u> <u>(\$/Delivery Month)</u>
January	[\$]
February	[\$]
March	[\$]
April	[\$]
May	[\$]
June	[\$]
July	[\$]
August	[\$]
September	[\$]
October	[\$]
November	[\$]
December	[\$]

6.2. Monthly Payment. Buyer shall pay Seller a monthly payment for each Delivery Month of the Delivery Term in accordance with Article 9, below.

ARTICLE 7. EVENTS OF DEFAULT; REMEDIES

7.1. Events of Default.

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a "Seller's Event of Default"):

(i) any asset of Seller that is material to its performance under this Agreement is taken by or is subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within sixty (60) days after its levy;

(ii) Seller fails to satisfy the creditworthiness and collateral requirements and Seller fails to provide collateral acceptable to Buyer within ten (10) Business Days of Buyer's written demand therefor pursuant to Sections 10.3, 10.4, 10.4, and 10.5;

(iii) any material misrepresentation or omission in any metering (or submetering) or any report or Notice with regard to delivery or replacement of Distribution Services required to be made or delivered by Seller to Buyer, or undue delay or withholding of such data, report or Notice, which misrepresentation, omission or undue delay or withholding is not cured within ten (10) Business Days of Buyer's written demand therefor;

(iv) Seller intentionally or knowingly delivers, or attempts to deliver, Distribution Services not produced by the Project;

(v) Seller fails to achieve the Initial Delivery Date, unless Seller Notifies Buyer of a Force Majeure Extension pursuant to Article Eight;

(vi) Seller fails to satisfy the Delivery Conditions by the applicable deadlines set forth in Section 2.2(b).

(vii) Distribution Service performance for any month during the Delivery Term is less than [to be determined] for any reason other than Force Majeure;

(viii) The results of a Performance Test show that the Project provides Distribution Services at less than one-hundred percent (100%) of the Contract Capacity set forth in Section 3.3 for any reason other than Force Majeure;

(ix) Seller fails to comply with Section 4.4(a) on more than one (1) day in the Delivery Term;

(b) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a "Party's Event of Default"):

(i) a Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy or other insolvency laws;

(ii) absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy or other insolvency laws, which in either case, is not dismissed within ninety (90) days;

(iii) a Party fails to pay an amount when due and such failure continues for ten (10) Business Days after Notice thereof is received by the Party failing to make such payment;

(iv) any representation or warranty made by a Party pursuant to Appendix XIII Section 1(a) or Article Fourteen is false or misleading in any material respect when made, if not cured within thirty (30) days after delivery of Notice from the other Party that any material representation or warranty made in Appendix XIII Section 1(a) or Article Fourteen is false, misleading or erroneous in any material respect;

(v) a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and at the time of such

consolidation, amalgamation, merger or transfer, the resulting, surviving, or transferring entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an assumption agreement reasonably satisfactory to the other Party; or

(vi) a Party fails to perform any of its material obligations or covenants under this Agreement not otherwise addressed in this Section 7.1, and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) days after Notice specifying the failure is received; provided, however, that such period shall be extended for an additional reasonable period not to exceed one hundred twenty (120) days if cure cannot be effected in thirty (30) days and if corrective action, reasonably calculated to cure the default within a reasonable period of time, is instituted by the Defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected.

7.2. Early Termination.

(a) If and for as long as an Event of Default with respect to a Defaulting Party has occurred, the other Party (“Non-Defaulting Party”) has the right to (i) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 21.1) and no later than twenty (20) days after such Notice is deemed to be received (as provided in Section 21.1), as an early termination date of this Agreement (“Early Termination Date”), (ii) accelerate all amounts owing between the Parties, (iii) end the Term effective as of the Early Termination Date, (iv) collect the Termination Payment, (v) withhold any payments due to the Defaulting Party under this Agreement, (vi) suspend performance, and/or (vii) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement.

(b) In the event of early termination, the Non-Defaulting Party shall be entitled to a “Termination Payment” equal to (i) the Project Development Security if the Early Termination Date occurs prior to the Initial Delivery Date or (ii) the Delivery Term Security if the Early Termination Date occurs on or after the Initial Delivery Date.

(c) As soon as practicable after establishing the Early Termination Date, the Non-Defaulting Party shall Notify the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is owed to the Non-Defaulting Party. The Notice will include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Party that owes the Termination Payment shall make such payment to the other Party within ten (10) Business Days after such Notice is effective.

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

7.3. Rights and Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Seven are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement; provided that the Termination Payment will be the Non-Defaulting Party’s sole remedy for damage in the event of the early termination of this Agreement and the Defaulting Party shall owe such amount without duplication to any other damages sustained by the Non-Defaulting Party. In no event shall the Defaulting Party owe the Non-Defaulting Party under different provisions of this Agreement for the same damages, claims, losses, liabilities or expenses.

7.4. Waiver. The Non-Defaulting Party will be deemed to have waived its rights to declare an Early Termination Date and to demand remedies under Section 7.2 if the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) days of the date on which the Event of Default becomes known, or reasonably knowable, to the Non-Defaulting Party; provided, however, that the time period for providing Notice of an Early Termination Date and a demand for remedies will not be deemed waived if (a) the Defaulting Party has consented to an extension of time or (b) the Non-Defaulting Party has provided Notice of the Event of Default and the Defaulting Party has represented that it is seeking to cure and the delay in providing such Notice is in reliance by the Non-Defaulting Party on the good faith attempt by the Defaulting Party to cure. A Party may not withhold payments or suspend performance under Section 7.2 for a period of more than twenty (20) Business Days unless an Early Termination Date has been declared, and Notice thereof given, in accordance with Section 7.2.

ARTICLE 8. FORCE MAJEURE

8.1. Force Majeure.

(a) Effect of Force Majeure. A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure event, and the non-affected Party shall be excused from its corresponding performance obligations for the period of the affected Party's failure or delay of performance. The burden of proof for establishing the existence and consequences of an event of Force Majeure lies with the Party initiating the claim.

(b) Notice of Force Majeure. Within five (5) Business Days of the commencement of an event of Force Majeure, the Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation hereunder, shall provide the other Party with Notice in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and the effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure. Promptly, but in any event within ten (10) days after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such event of Force Majeure.

(c) Mitigation of Force Majeure. In addition to the requirements of Section 8.1(d) below if applicable the suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Initial Delivery Date as a result of a Force Majeure or a Force Majeure Extension as Notified by Seller in the case of Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv) or 2.2(a)(v), in accordance with this Article Eight, then Sections 8.1(d) and (e) shall apply.

(d) Force Majeure Extension. Notwithstanding anything to the contrary in this Agreement, the Initial Delivery Date may be extended on a day for day basis in the event of Force Majeure ("Force Majeure Extension").

(i) Seller's claims for a Force Majeure Extension cannot cumulatively exceed thirty (30) days; and

(ii) In order to request a Force Majeure Extension, Seller shall provide Buyer with Notice of the requested Force Majeure Extension no later than sixty (60) days prior to the Initial Delivery Date, which Notice must clearly identify the Force Majeure Extension and the length of the Force Majeure Extension subject to the limitations in this Section 8.1(d); provided that if sixty (60) days prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(e) Failure to Achieve Initial Delivery Date after Force Majeure Extension. Buyer shall have the right, but not the obligation, to terminate this Agreement due to Seller's failure to achieve the Initial Delivery Date due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) following a Force Majeure Extension.

(f) Force Majeure Failure. Subject to Section 8.1(a), Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following, each constituting a "Force Majeure Failure" if during the Delivery Term:

(i) Distribution Service performance for any calendar year during the Delivery Term averages less than [to be determined] for any reason; or

(ii) the Project is destroyed or rendered inoperable by an event of Force Majeure.

(g) Effect of Termination. If either Party exercises its termination right under Section 8.1(e) for Seller's failure to achieve the Initial Delivery Date due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) following a Force Majeure Extension or Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.1(f), then the Delivery Term is terminated and the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in the Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 1.1(a).

ARTICLE 9. PAYMENT AND NETTING

9.1. Billing and Payment. On or before the fifteenth (15th) calendar day following each month of the Delivery Term, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller or from Seller to Buyer (as applicable) under this Agreement, including, as applicable:

(a) the Monthly Payment, and

(b) other compensatory adjustments required by this Agreement, including adjustments for Governmental Charges.

9.2. Netting. If each Party is required to pay the other an amount in the same month pursuant to this Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Buyer is expressly authorized to set off from any of its payments hereunder an amount owed by Seller to Buyer in accordance with this Agreement.

9.3. Payment. Payment of all undisputed amounts owed shall be due by the tenth (10th) Business Day after receipt of invoice (“Monthly Payment Date”). Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date to but excluding the date the delinquent amount is paid in full.

9.4. Intentionally Omitted.

9.5. Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with the provisions of Article Eighteen (Dispute Resolution). Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date on which the payment is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent invoices, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is Notified in accordance with this Section 9.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred, the right to payment for such performance is waived.

ARTICLE 10. CREDIT AND COLLATERAL REQUIREMENTS

10.1. Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to Buyer, a copy of Buyer’s annual report containing audited consolidated financial statements for such fiscal year, if available, and (b) within sixty (60) days after the end of each of Buyer’s first three fiscal quarters of each fiscal year, a copy of Buyer’s quarterly report containing unaudited consolidated financial statements for each accounting period, if available, prepared in accordance with Generally Accepted Accounting Principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on Buyer’s website or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

10.2. Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller’s annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller’s quarterly report containing unaudited consolidated financial

statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles. [Seller shall be deemed to have satisfied such delivery requirements if the applicable reports are publicly available on Seller's website or the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Buyer upon their completion and filing with the SEC.

10.3. Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Performance Assurance hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash-equivalent collateral and any proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Performance Assurance, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first- priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence, and during the continuation, of an Event of Default or an Early Termination Date, Buyer, as the Non- Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against the Performance Assurance or other collateral posted by Seller or its Affiliates with Buyer under another agreement, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Performance Assurance, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10.4. Performance Assurance.

(a) Performance Assurance. Seller agrees to deliver to Buyer Performance Assurance in a form acceptable to Buyer to secure its obligations under this Agreement, which Performance Assurance Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security. On the Effective Date, Seller shall post Project Development Security in the form of cash or letter of credit, equal to ***[insert dollar amount equal to \$[to be defined in SDG&E solicitation documents]]***.

(ii) Delivery Term Security. Within five (5) Business Days prior to the Initial Delivery Date, Seller shall post Delivery Term Security in the form of cash or letter of credit, in an amount equal to ***[insert dollar amount equal to \$[to be defined in SDG&E solicitation documents]]***. With Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security.

(iii) The amount of Performance Assurance required under this Agreement is not a limitation of damages. For the avoidance of doubt, Buyer has no obligation to post collateral under this Agreement.

(b) Use of Project Development Security. Buyer is entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date in accordance with Section 7.2(b).

(c) Return of Project Development Security. If, after the Initial Delivery Date, no damages are due and owing to Buyer under this Agreement, then Seller will no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less any amounts drawn in accordance with Section 2.4(a) unless Seller elects to apply the Project Development Security to the Delivery Term Security in accordance with Section 10.4(a)(ii). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Buyer's receipt and acceptance of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security posted pursuant to Section 10.4(a)(ii).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Performance Assurance, at the Interest Rate and on the Interest Payment Date. Buyer will transfer to Seller all accrued Interest Amount on the unused cash Performance Assurance in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XII (Notices).

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any Interest Amount due thereon pursuant to Section 10.4(d) above, to Seller promptly after the following has occurred: (i) the Term has ended, or subject to Section 7.2, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including the Termination Payment, indemnification payments or other damages are paid in full.

10.5. Letter of Credit. Performance Assurance provided in the form of a Letter of Credit (see Appendix X) is subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Ten, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either subsection 10.5(b)(A) or 10.5(b)(B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either subsections (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 10.5(b) above, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such

Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Ten.

(c) Notwithstanding the foregoing in Section 10.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on “credit watch” negative or developing by S&P, or is on Moody’s “watch list” under review for downgrade or uncertain ratings action (either a “Watch”), then Buyer may make a demand to Seller by Notice (“LC Notice”) to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch (“Substitute Letter of Credit”). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit (“Substitute Bank Period”).

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

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

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer’s Notice to Cure pursuant to Section 10.5(b) and, if Seller fails to Cure, then the last paragraph in Section 10.5(b) shall apply to Seller.

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

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

ARTICLE 11. SAFETY

11.1. Safety. Seller shall comply at all times with the safety provisions set forth in Appendix XIII.

ARTICLE 12. GOVERNMENTAL CHARGES

12.1. Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

12.2. Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to Distribution Services, by reason of the execution, delivery, performance or enforcement of this Agreement or by reason of transactions contemplated by this Agreement, but not with respect to Buyer’s use of Distribution Services after delivery by Seller, including any resales or transfers of the Product. If either Party is required by Law to remit or pay Governmental Charges which are the other Party’s responsibility hereunder, the Party paying or remitting the other Party’s Governmental Charges may deduct the amount of any such Governmental Charges from the sums due to the other Party

under Article Six of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Law.

ARTICLE 13. LIMITATIONS

13.1. Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION (OTHER THAN IN SECTIONS 15.1 THROUGH 15.6) OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTIONS 15.1 THROUGH 15.6 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 14. REPRESENTATIONS; WARRANTIES; COVENANTS

14.1. Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that as of the Effective Date:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in the State of California and in all jurisdictions where the ownership of its properties or its operations require such qualification, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(b) except for receipt of CPUC Approval, in the case of Buyer, and the Governmental Approvals necessary to install, operate and maintain the Project, in the case of Seller, it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement, and the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;

(d) execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any lien upon its properties, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of any agreement to which it is a party or by which any of its respective properties is bound or affected;

(e) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(f) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(g) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(h) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(i) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (as in effect as of the Effective Date of this Agreement);

(j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of Distribution Services as provided in this Agreement; and

(k) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

14.2. General Covenants. Each Party covenants that throughout the Term:

(a) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and qualified to conduct business in the State of California and in all jurisdictions where ownership of its properties or its operations require such qualifications, except where the failure to do so would not have a material adverse effect on its

financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;

(d) it shall follow all the rules set forth in Appendix A of the MUA Decision with respect to any energy storage Distributed Resources comprising the Project.

14.3. Covenants of Seller. Seller covenants to and for the benefit of Buyer that throughout the Delivery Term (unless another time period is specified):

(a) it will deliver Distribution Services to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person;

(b) it shall operate the Project during the Delivery Term in accordance with the Operating Parameters in Appendix II and the Safety Requirements; and

(c) it shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to the Project.

ARTICLE 15. INDEMNITIES AND INSURANCE

15.1. Indemnity by Seller.

(a) Seller shall release, defend, indemnify and hold harmless Buyer, its directors, officers, employees, agents, attorneys, representatives and Affiliates (“Buyer Group”) against and from any Indemnifiable Losses, which arise out of or relate to or are in any way connected with (i) the Seller’s delivery of Distribution Services to Buyer, (ii) Seller’s or its Affiliates’ ownership, development, construction, operation and/or maintenance of the Project, including the Unit(s) and Sites(s); (iii) Third Party Claims arising from Seller’s or its Affiliates’ actions or inactions, including Seller’s breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Project or Site; (iv) any environmental matters associated with the Project, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller’s direction or agreement; (v) Third Party Claims arising under any agreement between Seller or its Affiliates ; or (vi) resulting from Seller’s or its Affiliates’ violation of any applicable Law, or requirements of Utility Distribution Company, NERC, WECC or Reliability Organization; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller’s Affiliates, or others, excepting only such Indemnifiable Losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group.

(b) Seller shall indemnify, defend and hold the Buyer Group harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

15.2. No Indemnity by Buyer. Buyer does not indemnify Seller.

15.3. Notice of Claim.

(a) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article Fifteen, the Party seeking indemnification hereunder (the “Indemnitee”) will promptly Notify the Party against whom indemnification is sought (the “Indemnitor”) in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to an Indemnifiable Loss under Sections 15.1 or 15.2. (The Notice is referred to as a “Notice of Claim”). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the Indemnifiable Loss.

(b) Notice of Third Party Claim. If the Indemnitee receives Notice of the assertion or commencement of a Third-Party Claim against it with respect to which the Indemnitor is obligated to provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) days after such Indemnitee’s receipt of Notice of such Third-Party Claim. Such Notice of Claim will describe the Third-Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if reasonably practicable, the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving Notice to the Indemnitee, to assume the defense of any Third-Party Claim at such Indemnitor’s own expense and by such Indemnitor’s own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.

(c) Direct Claim. Any Direct Claim must be asserted by giving the Indemnitor Notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) days from receipt of such Notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty (60) day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.

(d) Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 15.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.4. Defense of Third Party Claims. If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to the Indemnitor pursuant to Section 15.3(b), the Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 15.3(b), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) days after receiving Notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable

Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee acknowledge fault or culpability. If a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give Notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such Notice.

15.5. Subrogation of Rights. Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, the Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

15.6. Rights and Remedies are Cumulative. The rights and remedies of a Party pursuant to this Article Fifteen are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

15.7. Insurance. Throughout the Term, Seller shall, at its sole cost and expense, procure and maintain the following insurance coverage and be responsible for its Contractors maintaining sufficient limits of the appropriate insurance coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.7 constitute a material obligation of this Agreement.

(a) Workers' Compensation Employer's Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employer's Liability insurance will not be less than [X] dollars (\$[X].00) [for example: \$1,000,000].

(b) Commercial General Liability.

(i) Coverage will be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form or the Associated Electric & Gas Insurance Services Limited (AEGIS) "claims made" form, or similar "claims made" form acceptable to Buyer. Such insurance shall include coverage for products/completed operations, broad form/blanket contractual liability for written contracts, property damage and personal injury

liability, premises/operations, independent contractor liability, and pollution (including hostile fire) liability. Defense costs shall be provided as an additional benefit and may be included within the limits of liability. Such insurance will have no wildfire, failure to supply, explosion, collapse, or underground exclusions.

(ii) The limit will not be less than *[X]* dollars (*[\$X].00*) *[for example: \$200,000,000]* each occurrence. Coverage limits may be satisfied using an umbrella or excess liability policy.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds SDG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller, including Seller's Contractors. In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "San Diego Gas & Electric Company, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"

(B) be endorsed (blanket or otherwise) to specify that the Seller's or its Contractor's insurance is primary, and that any insurance or self-insurance maintained by SDG&E shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage will be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto."

(ii) The limit will not be less than *[X]* dollars (*[\$X].00*) *[for example: \$1,000,000]* each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage will be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Seller's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will not be less than *[X]* dollars (*[\$X].00*) *[for example: \$5,000,000]* each occurrence for bodily injury and property damage.

(iii) The policy will endorse SDG&E as additional insured.

(e) Cyber Liability.

(i) Cyber risk insurance including coverage of claims and losses with respect to interruption of and/or damage to SCADA systems, network risks, (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyright, trademark, service mark. Seller shall notify Sempra within 24 hours of discovery of any breach and will provide access to data.

(ii) The limit will not be less than [X] dollars (\$[X].00) [for example: \$1,000,000] each occurrence for bodily injury and property damage.

(f) Additional Insurance Provisions.

(i) Prior to the effective date, and thereafter during the Term of the Agreement, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller and its Contractors.

(ii) The insurance documentation will state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to Buyer. In the event of cancellation of any coverage, such insurance shall be replaced with equivalent coverage and without any gap in coverage.

(g) Form and Content. All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against SDG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

ARTICLE 16. RECORDS AND AUDIT RIGHTS

16.1. Operations Logs. Seller shall maintain a complete and accurate log of all material operations as set forth in Appendix XVII. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's written request. At the request of Buyer, the CPUC, or the staff of the CPUC, Seller shall provide all records demonstrating that the Project is operated and maintained in accordance with all applicable Laws.

16.2. Records and Audit.

(a) Records and Audit. Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Seller shall provide access to financial records and personnel required by Buyer to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Delivery Term all within forty-five (45) days after the end of each fiscal quarter:

(i) Seller's unaudited financial statements and notes to financial statements; and

(ii) financial schedules underlying the financial statements.

(b) Any information provided to Buyer pursuant to this Section 16.2 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other entities for which Buyer has similar agreements. Buyer shall use this information only for financial statement purposes and shall share such information with (i)

internal or external parties or (ii) regulatory, administrative or legal entities or authorities only as necessary in connection with the preparation and audit of Buyer's financial statements.

(c) The Parties shall, for five (5) years after creation or such longer period as may be required by applicable Law, each keep and maintain accurate and detailed records relating to the Project's deliveries of Distribution Services and such other information as required to support the amounts due and payable as between the Parties pursuant to this Agreement. Such records shall be made available by the Party holding such records to the other Party for inspection during normal business hours upon reasonable Notice.

16.3. General Audit Right. Each Party has the right, at its sole expense, during normal working hours, and after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement (including the Project Safety Plan or other documents that supplement this Agreement), charge, or computation made pursuant to this Agreement. If such examination reveals any inaccuracy in any statement, the necessary adjustments shall be made promptly; provided that, if the examining Party raises its objection more than twelve (12) months after the date of the statement in question, that objection shall be deemed waived.

16.4. Data Request Cooperation. Each Party shall use reasonable efforts to assist the other Party in gathering information for and preparing responses to data requests and other inquiries from Governmental Authorities that are related to or associated with the Project, delivery of Distribution Services and/or this Agreement, subject to the requirements of Article Nineteen.

16.5. Access Rights. Buyer, its authorized agents, employees and inspectors, have, while observing safety and security procedures of the Parties and Seller's Affiliate, and subject to the insurance requirements of Section 15.7, the right of ingress to and egress from the Project, including the Site(s) with reasonable advance Notice and for any purposes reasonably connected with this Agreement. Buyer shall make reasonable efforts to request from Seller access during normal business hours and to coordinate its emergency activities with the safety and security departments, if any, of the Project operator and/or Seller's Affiliate. Seller shall keep Buyer advised of current procedures for contacting the Project operator's and/or Seller's Affiliate safety and security departments.

ARTICLE 17. ASSIGNMENT

17.1. General Assignment. Neither Party will assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent will not be unreasonably conditioned, delayed, or withheld so long as (a) the assignee assumes the transferring Party's payment and performance, credit and collateral obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, (d) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request, and (e) in the case of Seller as the transferring Party with a transfer to an assignee that will have operational control of the Project, Seller delivers to Buyer, upon Buyer's request, documentation to demonstrate the assignee is capable of satisfying and complying with the Safety Requirements.

17.2. Assignment to Financing Providers. Seller may assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent will not be unreasonably conditioned, delayed, or withheld. If Buyer gives its consent, then the consent will be in a form substantially similar to the Form of Consent to Assignment attached as Appendix XV provided that (a) Buyer will not be required to consent to

any additional terms or conditions beyond those contained in Appendix XV, including extension of any cure periods or additional remedies for financing providers, and (b) Seller is responsible, at Buyer's request, for Buyer's reasonable costs and attorneys' fees associated with the review, negotiation, execution and delivery of documents in connection with such assignment.

17.3. Assignment in Connection with a Change in Control. Any direct change of control of Seller or Seller's Parent (whether voluntary or by operation of Law) is deemed an assignment and shall require the prior written consent of Buyer which consent shall not be unreasonably conditioned, delayed or withheld, provided that the requirements identified in Section 17.1(a) through (e) are met. Seller shall use commercially reasonable efforts to provide Buyer (a) Notice at least ten (10) days prior to the effectiveness of any indirect change in control, and shall in any event provide such Notice no later than ten (10) Business Days after the indirect change in control, and (b) such other information as Buyer may reasonably request in connection with such change in control.

17.4. Unauthorized Assignment. Any assignment or purported assignment in violation of this Article Seventeen is void.

ARTICLE 18. DISPUTE RESOLUTION

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

18.2. Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

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

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

(d) If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Subsection 18.2(b), refuses or does not meet within the thirty (30) calendar day period specified in Subsection 18.2(b), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 18.3.

18.3. Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 18.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by JAMS. As the first step the Parties agree to mediate any controversy before a mediator from the JAMS panel, pursuant to JAMS's commercial mediation rules, in San Diego, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a retired judge or justice from the JAMS panel conducted in San Diego, California, administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. If the dispute is not resolved within sixty (60) days of service of the written demand for mediation, then either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within five (5) days following the end of the mediation period.

18.4. Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the County of San Diego may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994), and, except as

modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(d) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him.

(e) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

ARTICLE 19. CONFIDENTIALITY

19.1. Confidential Information. Throughout the Term, neither Party shall disclose the non- public terms or conditions of this Agreement or the Parties' bidding or negotiation process or any technical, commercial, or operating information marked as proprietary or confidential (the "Confidential Information") to a third party.

19.2. Permitted Disclosures. A Party may disclose Confidential Information: (a) to the Party's Affiliates and the Party's and its Affiliate's employees, counsel, accountants, advisors, lenders, or equity investors who have a need to know such information and have agreed to keep such terms confidential; (b) to Buyer's Procurement Review Group, as defined in CPUC Decision (D.) 02-08-071 and made applicable to this Agreement by D.04-06-015, subject to a confidentiality agreement; (c) to the CPUC (including CPUC staff) under seal for purposes of review (if such seal is applicable to the nature of the Confidential Information); (d) pursuant to Section 19.4; (e) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (f); (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC; or (g) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to a duly authorized Governmental Authority including the CPUC or any division thereof.

(i) Procedure for Permitted Disclosures. In connection with requests made pursuant to Section 19.2(e) ("Disclosure Order") and disclosures pursuant to Sections 19.2(e) or 19.2(f) ("Regulatory Disclosure") each Party shall, to the extent practicable, use reasonable efforts to: (A) notify the other Party prior to disclosing the Confidential Information and (B) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (I) prohibited from complying with a Disclosure Order or making the Regulatory Disclosure or (II) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information.

19.3. Remedies. Except as provided in Section 19.2 with respect to the Parties' permitted disclosures, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

19.4. Exceptions.

(a) Notwithstanding Section 19.1 of this Agreement, any time on or after the date on which Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose those terms required to be made public by the CPUC in its then-current

application or advice- letter template, as applicable, including the following: Party names, resource type, Delivery Term, Project location, terms relating to the capacity of the Project, and anticipated Commercial Operation Date. Seller acknowledges and agrees that the CPUC may require the public disclosure of this Agreement prior to the termination of the confidentiality protections and that Buyer shall be held harmless with respect to such disclosure.

(b) In addition to the disclosures of Confidential Information permitted under Section 19.2, Seller is permitted to disclose Buyer's Contractor Safety Program Standards to Contractors.

19.5. Other Confidential Information. The Parties agree that the confidentiality provisions under this Article Nineteen are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Article Nineteen shall govern confidential treatment of all non-public information exchanged between the Parties related directly or indirectly to this Agreement as of and after the Effective Date.

ARTICLE 20. GENERAL PROVISIONS

20.1. General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will provide the original signed Agreement; provided, however, that the execution and delivery of this Agreement and its counterparts is subject to Section 20.3. The Parties acknowledge and agree that this Agreement is a forward contract (within the meaning of the Bankruptcy Code, as in effect as of the Effective Date). This Agreement shall be binding on each Party's successors and permitted assigns.

20.2. Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

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

20.4. Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the

Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

20.5. Interpretation. The following rules of interpretation apply:

(a) The term “including” means “including without limitation”; the terms “year” and “calendar year” mean the period of months from January 1 through and including December 31; the term “month” means a calendar month unless otherwise indicated, and a “day” means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends, respectively.

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

(c) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies unless otherwise specified.

(d) Capitalized terms used in this Agreement, including the appendices hereto, have the meaning set forth in Appendix I, unless otherwise specified.

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

(f) Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. Words referring to market rules, activities and practice have the meaning generally ascribed to such words in California.

(g) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment will, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(h) Any reference in this Agreement to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity succeeding to its functions.

(i) All references to dollars or “\$” are to U.S. dollars.

(j) When an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific prevailing time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day.

(k) All references to Distribution Services mean each and all components of Distribution Services unless the context infers a particular component of Distribution Services.

20.6. Recordings. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of an electronic recording of all telephone conversations between the Parties to this Agreement related to the scheduling of any Distribution Services, and that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, subject to the confidentiality provisions of Article Nineteen. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the recordings pursuant to this Agreement.

20.7. Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to make or receive other Notices on behalf of such Party or to represent a Party (“Authorized Representative”) and in connection with such Notices and specify the scope of their individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time in its sole discretion by providing Notice.

20.8. No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other Party under any provision of this Agreement shall constitute the dedication of that Party’s system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

20.9. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 21. NOTICES

21.1. Notices. Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “Notify”), the Party with such right or obligation shall provide a written communication in the manner specified below. Notices may be sent by overnight mail or courier or e-mail. Invoices may be sent by e-mail. A Notice sent by e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Appendix XII contains the names and addresses to be used for Notices.

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SIGNATURES

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its Authorized Representative as of the dates provided below:

_____ [Seller],
A _____ company

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

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I

GENERAL DEFINITIONS

“Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, through one or more intermediaries, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

“Agreement” means this Distribution Services Agreement, and, together with each and every appendix, attachment, amendment, schedule and written supplement hereto, to the extent those are executed by the Parties, constitutes the entire agreement of the Parties as to the matters set forth herein.

“Arbitration” has the meaning set forth in Section 18.3.

“Authorized Representative” has the meaning set forth in Section 20.7.

“Balancing Authority” has the meaning set forth in the CAISO Tariff.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Business Day” means any day except Saturday, Sunday, or a Federal Reserve member bank holiday.

“Buyer” means SDG&E in its capacity as a purchaser of Distribution Services and other merchant functions, as distinct from the function of SDG&E as a Utility Distribution Company.

“Buyer Group” has the meaning set forth in Section 15.1.

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

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

“CARB” means the California Air Resources Board or any successor entity performing similar functions.

“CEC” means the California Energy Commission or any successor entity performing similar functions.

“Commercially Operable” with respect to the Project, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, and the Project has been released by the EPC Contractor to Seller for commercial operations.

“Commercial Operation Date” means the date stated in Seller’s Notice, substantially in the form of Appendix VI, upon which the Project became Commercially Operable.

“Communications Systems” has the meaning set forth in Section 4.7.

“Contractor” means the EPC Contractor and its subcontractors, as well as Seller or Seller’s Affiliates if any such entities are developing, constructing, operating or maintaining the Project during the Term, and any entity or person under contract with Seller or Seller’s Affiliates for the purpose of developing, constructing, operating or maintaining the Project during the Term.

“Contractor Safety Program Standards” has the meaning set forth in Appendix XIII.

“Contract Capacity” has the meaning set forth in Section 3.3.

“Contract Price” means the amount specified in Section 6.1.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“CPUC” or “Commission” means the California Public Utilities Commission or any successor entity performing similar functions.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, pursuant to which the CPUC approves of this agreement in its entirety, including payments to be made by the Buyer and such other matters as may be requested by Buyer in its application to the CPUC for approval, subject to CPUC review of the Buyer’s administration of the Agreement. CPUC Approval will be deemed to have occurred on the first day it can be legally determined that a final CPUC order containing such findings has become non-appealable.

“CPUC General Order 167” issued by the CPUC directs the implementation and enforcement of standards for the maintenance and operation of electric generating facilities and power plants and can be found at the link below:

http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/108114.htm

“Credit Rating” means, with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit

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

“Critical Milestone” is a milestone identified in Appendix V.

“Cure” has the meaning set forth in Section 10.5(b).

“Customer” means a Person that (i) is located in Buyer's Service Territory, (ii) has load connected to one or more of the feeders set forth in Appendix III, and (iii) has an effective Service Agreement.

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

“Delivery Condition” has the meaning set forth in Section 2.2(a).

“Delivery Month” means a calendar month during the Delivery Term.

“Delivery Point(s)” has the meaning set forth in Section 3.4 and selected in Appendix III.

“Delivery Term” has the meaning set forth in Section 1.1(b).

“Delivery Term Security” means the Performance Assurance required of Seller, as specified and referred to in Section 10.4(a).

“Direct Claim” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third-Party Claim.

“Disclosing Party” has the meaning set forth in Section 19.2.

“Disclosure Order” has the meaning set forth in Section 19.2.

“Distributed Resource” has the meaning given to the term in California Public Utilities Code Section 769.

“Distribution Hosting Capacity” has the meaning set forth in Appendix II.

“Distribution Load Capacity” has the meaning set forth in Appendix II.

“Distribution Services” has the meaning set forth in Section 3.2.

“Early Termination Date” has the meaning set forth in Section 7.2(a).

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Electric Revenue Meter” means the measurement device(s) used by SDG&E to measure deliveries of Energy at the Delivery Point for purposes of billing.

“Electric System Upgrades” means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO

Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Project to the Utility Distribution Company's electric system for delivery of Energy from the Project.

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

"Emergency" means an actual or imminent condition or situation, that jeopardizes SDG&E electric system integrity or the integrity of other systems to which SDG&E is connected, as determined by SDG&E in its sole discretion.

"Emission Reduction Credits" means emission reductions that have been authorized by a local air pollution control district pursuant to California Health and Safety Code, Division 26 Air Resources, Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

"Energy" means electric energy measured in kw-hours.

"Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for Distribution Services as defined in this Agreement with Seller, and Seller's compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license with respect to Seller's Distribution Services or Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits, Marketable Emission Trading Credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate the Project, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Project by Seller or Contractors, and the decontamination or remediation, on or off a Site or the Project, necessitated by the introduction of such hazardous substances on a Site or the Project by Seller or Contractors.

"EPA" means the U.S. Environmental Protection Agency or any successor entity performing similar functions.

"EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

"EPC Contractor" means Seller's engineering, procurement and construction contractor or such Person performing those functions.

"Equitable Defenses" means any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Event of Default” means a Seller’s Event of Default and/or a Party’s Event of Default.

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

“Executive” has the meaning set forth in Section 18.2(a).

“Exigent Circumstance” means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Project or portion thereof.

“FERC” means the Federal Energy Regulatory Commission or any successor entity performing similar functions.

“Force Majeure” means any event or circumstance to the extent beyond the control of and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Additionally:

(a) Force Majeure may include:

(i) acts of God, including landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather-related events affecting an entire region which caused failure of performance;

(ii) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Commercial Operation Date;

(iii) sabotage, riot, acts of terrorism, war and acts of public enemy; or

(iv) restraint by court order or other Governmental Authority.

(b) Force Majeure does not include: **[NOTE: Definition may need to be updated to reflect Project specifics.]**

(i) a failure of performance of any Third Party or SDG&E acting in its capacity as (A) Participating TO or (B) Utility Distribution Company, including any party providing electric interconnection, distribution or transmission service,

(ii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above);

(iii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other Third Party employed by Seller to work on the Project;

(iv) Seller’s ability to sell Distribution Services at a price greater than the price set forth in this Agreement;

(v) Seller's inability to obtain permits or approvals of any type for the construction, operation or maintenance of the Project, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) Seller's inability to complete interconnection by the applicable Initial Delivery Date, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vii) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; and

(viii) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement.

(ix) Seller's inability to obtain or retain any Site [or Customer] that is a part of the Project.

"Force Majeure Extension" has the meaning set forth in Section 8.1(d).

"Force Majeure Failure" has the meaning set forth in Section 8.1(e).

"Generally Accepted Accounting Principles" means the standards for accounting and preparation of financial statements established by the Financial Accounting Standards Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

"Governmental Approval" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Project.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Governmental Charges" has the meaning set forth in Section 12.2.

"Hazardous Substance" means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant" or "pollutant" or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls ("PCBs"), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

"Indemnifiable Loss(es)" means any damages, claims, losses, liabilities, obligations, fines, penalties, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

“Indemnitee” means the Buyer Group.

“Indemnitor” means the Seller Group.

“Ineligible LC Bank” has the meaning set forth in Section 10.5(c)(i)(A).

“Ineligible LC Bank Notice Period” has the meaning set forth in Section 10.5(c)(i).

“Initial Delivery Date” has the meaning set forth in Section 1.1(b).

“Initial Negotiation End Date” has the meaning set forth in Section 18.2(a).

“Interconnection Agreement” means the agreement and associated documents (or any successor agreement and associated documentation approved by the CPUC) by and among Seller and the Utility Distribution Company governing the terms and conditions of the interconnection of the Project with the Utility Distribution Company’s grid, including any description of the plan for interconnecting the Project to the applicable grid.

“Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

“Interest Payment Date” means the date of returning unused Performance Assurance held in the form of cash.

“Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.

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

“JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

“kW” means kilowatts.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Term; or any binding interpretation of the foregoing.

“LC Notice” has the meaning set forth in Section 10.5(c).

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix X to this Agreement; provided, that if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of

Credit amount exceeding ten million dollars (\$10,000,000.00) requires Buyer's prior written consent.

"Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

"Manager" has the meaning set forth in Section 18.2(a).

"Marketable Emission Trading Credits" means without limitation, emissions trading credits or units pursuant to the requirements of California Health & Safety Code Division 26 Air Resources, Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. §7651b.(a) to (f)).

"Mechanical Completion" means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; and (b) the Project is ready for testing and commissioning, as applicable.

"Meter Service Agreement" has the meaning set forth in the CAISO Tariff.

"Monthly Payment" has the meaning set forth in Section 6.2.

"Monthly Payment Date" has the meaning set forth in Section 9.3.

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

"MUA Decision" means CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities.

"MW" means megawatts.

"NERC" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

"Non-Defaulting Party" has the meaning set forth in Section 7.2(a).

"Notice" unless otherwise specified in this Agreement, means a written communication which is delivered by overnight courier service or electronic messaging (e-mail), and in the manner required by Section 21.1, as applicable to a given communication.

"Notice of Claim" has the meaning set forth in Section 15.3(a).

"Notify" means to provide a Notice.

"Operating Parameters" shall mean the parameters set forth in Appendix II.

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

“Party” or “Parties” has the meaning set forth in the preamble of this Agreement.

“Party’s Event of Default” has the meaning set forth in Section 7.1(b).

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes Project Development Security and Delivery Term Security. Buyer only accepts two forms of collateral to satisfy the Performance Assurance obligations: (a) cash via wire transfer in immediately available funds, or (b) a Letter of Credit.

“Performance Test” has the meaning set forth in Section 5.1(a), and includes Buyer Performance Tests and Seller Retests.

“Permit” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“Plan Extension” has the meaning set forth in Appendix XIII Section 2(a)(i).

“Product” means the Distribution Services set forth in Appendix II Section 1.

“Project” means all Distributed Resources, together with all appurtenant facilities and equipment, including any control and Communication Systems, necessary to provide Distribution Services as depicted in Appendix III. Resources that compose the Project must be Distributed Resources and may be in front of or behind a Customer’s retail meter.

“Project Development Security” is the Performance Assurance required of Seller, as specified and referred to in Section 10.4(a)(i).

“Project Safety Plan” means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements and shall include the items that are generally outlined in Appendix XVI.

“Project Safety Plan Documents” means that information and documentation listed in Appendix XVI.

“Protocol” has the meaning set forth in Section 19.2.

“Prudent Electrical Practices” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to resources

composing the Project during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

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

(a) Safeguards are implemented and maintained for the Project and at each Site and are sufficient to address reasonably foreseeable incidents;

(b) equipment, material, and supplies are sufficient and accessible to operate the Project safely and reliably;

(c) operating personnel are trained, equipped, and capable of responsible operation and maintenance of the Project and at each Site, including identifying and responding to System Emergencies, Emergencies, or Exigent Circumstances originating from or impacting the Project or Site;

(d) the Project's material components and control systems are designed, manufactured, and configured to meet the standard of durability and safety generally used for electric power operating in the relevant region; and

(e) the Project is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistent with the intended design specifications, applicable Laws, and Permits, and over the complete range of environmental conditions reasonably expected to occur at each Site.

"Referral Date" has the meaning set forth in Section 18.2(a).

"Regulatory Disclosure" has the meaning set forth in Section 19.2(i).

"Reliability Organization" means an "Electric Reliability Organization" as defined in Section 215(a)(2) of the Federal Power Act or a "regional entity" as defined in Section 215(a)(7) of the Federal Power Act.

"Reliability (Back-Tie) Services" has the meaning set forth in Appendix II Section 1.

"Remediation Event" means the occurrence of any of the following with respect to the Project or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Project's operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Appendix XIII Section 2, in its sole discretion, that the Seller, the Project Safety Plan, Safety Attestation, as applicable, is not consistent with the Safety Requirements; or (g) any actual condition related to the Project or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Project or a Site.

“Remediation Period” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days unless extended pursuant to Appendix XIII Section 4.

“Restricted Period” has the meaning set forth in Appendix II.

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

“Safeguard” means any procedures, practices, or actions with respect to the Project, a Site or Work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

“Safety Attestation” means a written attestation or certification from a Licensed Professional Engineer substantially in the form attached hereto as Appendix VII.

“Safety Remediation Plan” means a written Notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller’s plans to resolve the Remediation Event.

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Standards, and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC.

“SDG&E Tariff” means the tariff schedules applicable to retail electric service (including unbundled delivery service) of SDG&E on file with the CPUC, including all associated preliminary statements, rate schedules and electric rules, as they may be amended, suspended or replaced from time to time.

“SEC” means the U.S. Securities and Exchange Commission, or any successor entity performing similar functions.

“Seller” is the entity named in the preamble to this Agreement.

“Seller Group” means Seller, its directors, officers, agents, attorneys, representatives and Affiliates.

“Seller’s Event of Default” has the meaning set forth in Section 7.1(a).

“Seller’s Parent” means any entity or Person that directly holds fifty percent (50%) or more of the equity interests in Seller.

“Serious Incident” means a harmful event that occurs on a Site during the Term arising out of, related to, or connected with the Project or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to Project operating personnel, Seller’s Contractors or subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than one hundred thousand dollars (\$100,000.00); (d) release of hazardous material above the limits, or violating the requirements, established by Permits, codes, standards, regulations, Laws or Governmental Authorities; (e) environmental impacts exceeding those authorized by Permits or applicable Law.

“Service Agreement” means an agreement denoted by a unique service identification number between Buyer, in its function as Utility Distribution Company, and a person or entity for electric distribution service under the SDG&E Tariff.

“Service Territory” means the geographic area within which SDG&E as a Utility Distribution Company is authorized and required to provide electric distribution service.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Site(s)” means the real property or properties on which one or more Distributed Resources comprising the Project is located, as identified in Appendix III and as may be updated from time to time in accordance with Section 4.5.

“Site/Customer List” has the meaning set forth in Section 4.5(b).

“Substitute Bank Period” has the meaning set forth in Section 10.5(c).

“Substitute Letter of Credit” has the meaning set forth in Section 10.5(c).

“Term” has the meaning set forth in Section 1.1(a).

“Termination Payment” has the meaning set forth in 7.3.

“Third Party” means a Person that is not a member of the Buyer Group or the Seller Group.

“Third-Party Administrator” means the Third Party used to collect and verify safety pre-qualification pursuant to Buyer’s Contractor Safety Program Standards. As of the Execution Date of this Agreement, SDG&E’s Third-Party Administrator is ISNetworld.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

“Third Party Sales” has the meaning set forth in Section 3.1.

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

“Transmission Provider” means the CAISO.

“Utility Distribution Company” means SDG&E.

“Watch” has the meaning set forth in Section 10.5(c).

“WECC” means the Western Electricity Coordinating Council or its successor entity with similar functions.

“Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations.

APPENDIX II

DISTRIBUTION SERVICES TYPE(S) AND CONTRACT CAPACITY

1. Distribution Services Type(s).

Distribution Services shall consist of the Project's ability to provide, and the provision of, one or more of the following services that are checked as applicable:

Distribution Capacity Services: which is provided by decreasing net loading on distribution infrastructure during the Operating Parameters through decreasing electrical consumption or increasing generation, in accordance with the Operating Parameters set forth below to mitigate thermal overload conditions and ensure local distribution safety and reliability;

Voltage Support Services: *not available at this time*

Reliability (Back-Tie) Services: which is provided by decreasing net loading on distribution infrastructure through decreasing electrical consumption or increasing generation, in accordance with the Operating Parameters set forth below to reduce thermal loading for local distribution safety and reliability operations (e.g. emergency and planned switching)

Resiliency (Microgrid) Services: *not available at this time*

2. Contract Capacity.

The Contract Capacity is the amounts specified in Section 3 (Operation Parameters) by Delivery Year, Delivery Month, Delivery Days, and Delivery Hours:

3. Operating Parameters.

a. The Operating Parameters for the Distribution Capacity Services of the Project are:

Project must deliver the day-ahead scheduled Contracted Capacity (in the Delivery Year) for the delivery periods below.

Delivery Years: **2025-2030**

Delivery Months: **June – October**

Delivery Days: **all days**

Delivery Hours:

hours ending 14-22

Minimum duration the Project must be able to deliver: **[Example times provided]**

[x] **9 hours**

- b. The Operating Parameters for the Reliability (Back-Tie) Services of the Project are:
Project must deliver the Contracted Capacity as described below.

There is no associated back-tie need.

5. Restricted Periods.

To prevent grid reliability problems as described below, the operation of the Project must not be during the following periods (“Restricted Periods”):

Months: None

Days: None

Hours: None

Description and location of grid reliability problems:

None

APPENDIX III

DESCRIPTION OF PROJECT & UNITS

The following describes the Project to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

- In Front of the Meter Generation
- In Front of the Meter Energy Storage
- In Front of the Meter Renewable Generation
- Behind-the-Meter Storage
- Demand Response
- Energy Efficiency

Project name:

Project Site name:

Project physical address:

Project latitude:

Project longitude:

Technology type:

Minimum Stored Amount: MWh

Minimum Discharging Duration: hours

[EACH PROJECT DESCRIPTION TO BE DEVELOPED TO DEPICT RESOURCES, INTERCONNECTION POINTS, AND INITIAL SITE LIST AND/OR CUSTOMER LIST]

The resources that compose the Project shall each be interconnected to circuits or loads or associated with load facilities that are electrically interconnected to one or more of the following:

[to be inserted.]

The Project's Communications Systems shall be designed and installed as follows:

[to be inserted.]

APPENDIX IV

INITIAL DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Distribution Services Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), and Section 2.2 of that Agreement, this letter (“Initial Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that the Delivery Conditions to the Initial Delivery Date have been satisfied or waived in writing by Buyer. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Additionally, Seller provides the following FERC Tariff information, if applicable, for reference purposes only:

Tariff: Dated: Docket Number:

IN WITNESS WHEREOF, each Party has caused this Initial Delivery Date Confirmation Letter to be duly executed by its Authorized Representative as of the date of last signature provided below:

[INSERT SELLER’S NAME HERE]

**SAN DIEGO GAS AND
ELECTRIC COMPANY**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX V

CRITICAL MILESTONES

[Note to Seller: Seller shall select the Project type offered and designate the month, date, year for compliance with the Critical Milestone.]

Each Critical Milestone is subject to extension for delays as a result and to the extent of Force Majeure, as described in Section 8.1(d).

[SDG&E has provided examples for different types of Projects.]

Energy Efficiency

- Customer Agreements:
- Baseline Measurements:
- Installation:
- Performance Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Contract Capacity
- Commercial Operation

Demand Response

- Customer Agreements
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Contract Capacity
- Commercial Operation

Behind-the-Meter renewable generation

- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Contract Capacity
- Commercial Operation: Seller shall provide to Buyer a certification of Seller Licensed Professional Engineer, substantially in the form attached hereto as Appendix VI, demonstrating satisfactory completion of the Project and that the Commercial Operation Date has occurred.

In Front of the Meter renewable generation

- Site Control:
- Interconnection Agreements:
- Safety Plan:
- Construction Start:
- Performance Test:
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Contract Capacity
- Commercial Operation:

[] Behind-the-Meter Storage

- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Contract Capacity
- Commercial Operation

[] In Front of the Meter Storage

- Site Control
- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Contract Capacity
- Commercial Operation

APPENDIX VI

CERTIFICATION FOR COMMERCIAL OPERATION

This certification of commercial operation (“Certification”) is delivered by _____ (“Seller”) to San Diego Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Distribution Services Agreement dated *[INSERT DATE]* (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) The Project became Commercially Operable on *[INSERT DATE]*.
- (2) The Project has been constructed in accordance with Appendix III.
- (3) The Project is capable of producing and delivering the Distribution Services at the Contract Capacity.
- (4) Seller has designed the Project to perform for the Delivery Term.
- (5) The design, construction, or operations of the Project was carried out by a qualified organization.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided to certify as to the statements in this Certification and Section 2.1(c) of the Agreement.

EXECUTED by SELLER this _____ day of _____, 20__.

[INSERT SELLER’S NAME HERE]

Signature: _____

Name: _____

Title: _____

Date: _____

[Licensed Professional Engineer] _____

Signature: _____

Name: _____

Title: _____

Date: _____

License Number and LPE Stamp _____

APPENDIX VII

SAFETY ATTESTATION

This Safety Attestation is delivered by _____ (“Licensed Professional Engineer”) to San Diego Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Distribution Services Agreement dated (“Agreement”) by and between (“Seller”) and Buyer. All capitalized terms used in this Safety Attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Licensed Professional Engineer _____ hereby certifies the following:

- (1) The Project is able to operate in a manner consistent with the Safety Requirements;
- (2) The Project Safety Plan demonstrates compliance with all applicable Safety Requirements and reasonably takes into account the items in Appendix XVI to the Agreement; and
- (3) If a Remediation Event has occurred, Seller has taken into account its Safety Remediation Plan for the Project and the applicable Site(s).

[Licensed Professional Engineer] _____

Signature: _____

Name: _____

Title: _____

Date: _____

License Number and LPE Stamp

APPENDIX VIII

METERING, MEASUREMENT, VERIFICATION AND PERFORMANCE TESTING

1. Metering:

- Energy Efficiency: To be agreed upon by Buyer and Seller
- Demand Response: To be agreed upon by Buyer and Seller
- In Front of the Meter renewable generation: To be agreed upon by Buyer and Seller

[Example]:

Seller shall, at its sole expense, cause the installation, maintenance, operation and replacement (as needed) of a meter to be used as the Electric Revenue Meter and back-up meters, in accordance with the Transmission Provider's metering protocols, at the Delivery Point to measure the Distribution Services.

All Distribution Services must be measured by the Project's Electric Revenue Meter to be eligible for payment under this Agreement¹. Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters. Seller shall authorize Buyer to view the on-line meter data from the Electric Revenue Meter. Within Seller's Meter Service Agreement with the CAISO, as applicable, Seller shall identify Buyer as an authorized user with "read only" privileges.

Seller consents to Buyer obtaining Electric Revenue Meter data from the Transmission Provider and all inspection, testing and calibration data and reports for the Electric Revenue Meters. Seller agrees to provide to Buyer all meter data, inspection, testing and calibration data and reports for the submeter(s) upon Buyer's request.]

- Behind-the-Meter Energy Storage: To be agreed upon by Buyer and Seller
- In Front of the Meter Energy Storage: To be agreed upon by Buyer and Seller

2. Testing

- Energy Efficiency:
 - Initial performance test: baseline measurement
 - Performance:
- Demand Response:
 - Baseline Capacity assessment
 - Initial performance Test (process and measurement)
 - Buyer Performance Test (process and measurement)
 - Seller Retest (process and measurement)

¹ For Energy Efficiency DER, where a metered-based method is not appropriate or feasible to quantify energy efficiency savings, SDG&E will coordinate with the developer to utilize the deemed savings approach or another method as mutually agreed upon between SDG&E and the developer.

[] Behind-the-Meter generation: *[Example:*

- Initial performance Test (process and measurement): For the Initial Performance Test, Seller shall provide Buyer Notice at least ten (10) Business Days prior to the Initial Performance Test Critical Milestone date specified in Appendix V that the Project is ready for an Initial Performance Test. Upon receipt of such Notice, Buyer shall provide Seller a Notice of the Initial Performance Test by providing a dispatch instruction to Seller by 8:00 am PPT the day before the requested Initial Performance Test to provide Distribution Services at the Contract Capacity, provided that such date is no later than the Initial Performance Test Critical Milestone date specified in Appendix V. The Initial Performance Test will test Distribution Capacity.
- Buyer Performance Test (process and measurement): For a Buyer Performance Test, Buyer shall provide Seller Notice with Buyer's scheduling and dispatch instruction as described in Section 4.8(a) that the delivery of Distribution Services for such day also qualifies as a Performance Test.
- Seller Retest (process and measurement): Seller may perform a Seller Retest by (i) Notifying Buyer prior to any Buyer scheduled delivery of Distribution Services that such delivery of Distribution Services constitutes a Seller Retest, or (ii) Notifying Buyer of a Seller Retest by 10:00 am PPT the day before such Seller Retest if Buyer has not scheduled delivery of any Distribution Services for such day.]

[] In Front of the Meter generation:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

[] Behind-the-Meter Energy Storage:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

[] In Front of the Meter Energy Storage:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

APPENDIX IX

SCHEDULING

During the Delivery Term, Seller shall comply with the requirements associated with scheduling in Section 4.8 if applicable based on the resource type

Energy Efficiency: Applicable

Demand Response: Applicable

Behind-the-Meter generation: Applicable

In Front of the Meter generation: Applicable

Behind-the-Meter Energy Storage: Applicable

In Front of the Meter Energy Storage: Applicable

APPENDIX X

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

[DATE]

To: San Diego Gas & Electric Company
555 W. Fifth Street
Mail Code: ML 18A3
Los Angeles, CA 90013

Re: Our Irrevocable Standby Letter of Credit No. _____
In the Amount of US _____

Ladies and Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Beneficiary] (“Beneficiary”), by order and for account of [name of Applicant] (“Applicant”), [address of Applicant], available at sight upon demand at our counters, at [location] for an amount of US\$ _____ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

1- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: “[name of Applicant] (“Applicant”) is in default under the Distribution Services Agreement between Beneficiary and Applicant dated _____ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a “default”, “event of default” or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. \$ _____.”

or

2- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: “as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. \$ _____.”

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.
- Partial and multiple drawings are permitted.
- Fax of Document 1 or 2 or 3 above is acceptable. Notwithstanding anything to the contrary herein, any drawing hereunder may be requested by transmitting the requisite documents as described above to us by facsimile at _____ or such other number as specified from time to time by us. The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Beneficiary that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1, 2, or 3 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

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

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 ("UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

Authorized Signature(s)

APPENDIX XI – FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent”) is entered into as of [Date] among San Diego Gas & Electric Company (“SDG&E”), [_____] (the “Assignor”), and [Name of Lender/Agent for the Financing Parties] (the “Assignee”).

RECITALS

WHEREAS, pursuant to the Distribution Services Agreement made as of [Date] (the “Assigned Agreement”), between the Assignor and SDG&E, SDG&E has agreed to purchase output from the Assignor’s [Distribution Services] (the “Project”) as further specified in therein;

WHEREAS, pursuant to a [Security Agreement] dated as of [Date] (the “Security Agreement”), the Assignor has granted to the Assignee a lien on and a security interest in, to and under all of its right, title and interest in the Assigned Agreement, as collateral security for the Assignor’s obligations under that certain [Credit Agreement] dated as of the date of the Security Agreement among the Assignor, [_____] (“Lenders”) and the related financing documents (the “Credit Agreement” and collectively, the “Financing Documents”) pursuant to which the Lenders have agreed to loan funds to the Assignor in connection with the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

Section 2. Consent to Assignment.

(a) Under the terms and conditions set forth in this Consent, SDG&E hereby consents to (i) the assignment by the Assignor of all its right, title and interest in, to and under the Assigned Agreement to the Assignee, as collateral security for the obligations as and to the extent provided in the Security Agreement, and (ii) the assignment by the Assignor to any transferee or assignee of, or successor to, the Assignee (provided that any transferee or nominee satisfies the requirements of Article 8 (credit support) of the Assigned Agreement and is otherwise a Qualified Transferee. “Qualified Transferee” shall mean any transferee or assignee of, or successor to, the Assignee that (x) has (or has entered into contracts for the provision of services with an entity that has) substantial experience in the construction and/or operation of [wind/geothermal/solar generating facilities] of a type similar to the Project and (y) has the financial capability to perform under the Assigned Agreement (taking into account the fact that such transferee or nominee may be a special purpose vehicle whose sole asset may be the Project), in each case as reasonably determined by SDG&E.

(b) The Assignor agrees that it shall remain liable to SDG&E for all obligations of the Assignor under the Assigned Agreement, notwithstanding the collateral assignment contemplated in the Security Agreement.

(c) If the Assignee elects to exercise its remedies under the Security Agreement to foreclose on its lien in the Assigned Agreement, the Assignee shall notify SDG&E pursuant to Section 6(f) of this Consent. Upon completion of such foreclosure, the Assignee (or its permitted assignee or transferee or successor thereof) (i) shall be entitled to all of the benefits of the Assigned Agreement, (ii) shall assume in writing and be liable for each and every duty, obligation and liability of the Assignor under the Assigned Agreement, including but not limited to the duties and obligations that arose or accrued prior to the date of execution of this Consent, and (iii) shall cure any and all then existing Seller Events of Default that have arisen prior to the date of the assumption of the Assigned Agreement by Assignee (or its permitted assignee or transferee or successor thereof) except for any Seller Events of Default that, by their nature, are not capable of being cured by Assignee (or its permitted assignee or transferee or successor thereof).

Section 3. Representations and Warranties. SDG&E hereby represents and warrants to the Assignee that, as of the date of this Consent:

(a) The execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been duly authorized by all necessary corporate action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any material agreement presently in effect with respect to or binding upon SDG&E.

(b) All government approvals necessary for the execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been obtained and are in full force and effect.

(c) This Consent and the Assigned Agreement have been duly executed and constitute legal, valid and binding obligations of SDG&E, enforceable against it in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights generally or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, or by principles of public policy.

(d) To the knowledge of SDG&E, the Assignor is not in default under any material covenant or obligation under the Assigned Agreement, and no events have occurred that, with the giving of notice or the passage of time, would constitute a default by the Assignor under the Assigned Agreement, and the Assigned Agreement is in full force and effect and has not been amended.

Section 4. Consent and Agreement.

SDG&E and the Assignor hereby agree that, so long as any obligations of the Assignor under the Credit Agreement and the Security Agreement remain outstanding:

(a) No Material Amendments. SDG&E and the Assignor will not enter into any material amendment, supplement or other modification of the Assigned Agreement (an "Amendment") until after the Assignee has been given at least fifteen (15) Business Days' prior written notice of the proposed Amendment by the Assignor (a copy of which notice will be provided to SDG&E by the Assignor), and will not then enter into such Amendment if SDG&E has, within such fifteen (15) Business Day period, received a copy of (a) the Assignee's objection to such Amendment or (b) the Assignee's request to the Assignor for additional information with respect to such Amendment.

(b) Notices of Default and Right to Cure.

(i) SDG&E shall deliver to the Assignee at the address set forth on the signature pages hereof, or at such other address as the Assignee may designate in writing from time to time to SDG&E, concurrently with the delivery thereof to the Assignor, a copy of each notice of default under the Assigned Agreement. Notwithstanding anything to the contrary contained in the Assigned Agreement, such notice shall be coupled with an opportunity to cure any such default within the longer of the cure period available to the Assignor in the Assigned Agreement or thirty (30) days after notice thereof (except with respect to payment defaults, which cure must be made within five (5) Business Days after the last day of the cure period available to the Assignor in the Assigned Agreement with respect to payment defaults), such cure period shall commence upon receipt of notice by the Assignee). If possession of the Facility is necessary to cure any Default by the Assignor under the Assigned Agreement, and the Assignee commences foreclosure proceedings against the Assignor, the Assignee will be allowed an additional sixty (60) days to complete such proceedings. In order for the Assignee to cure a default under Section 5.1(d) of the Assigned Agreement, the Assignee shall secure, as soon as reasonably practical after such default, an order from the court (the "Bankruptcy Court") administering the proceeding under which the Assignor is a debtor in a proceeding under Title 11 of the United States Code, as amended (the "Bankruptcy Code") in a form reasonably acceptable to SDG&E which authorizes (a) the Assignor to pledge collateral to secure the Assignor's obligations under the Assigned Agreement (whether by the maintenance or provision of a Letter of Credit or otherwise) whether such obligations arose prior or following the Section 5.1(d) default of the Assigned Agreement, (b) the right of SDG&E to terminate the Assigned Agreement upon a subsequent default and expiration of cure periods described herein with respect to the Assignor (including, without limitation, the conversion of a case under Chapter 11 of the Bankruptcy Code to a case under Chapter 7 of the Bankruptcy Code), and to exercise rights of netting or setoff of obligations upon such termination, in each case without regard to Section 362 of the Bankruptcy Code and without regard to whether the amounts to be netted or setoff were incurred pre-petition or post-petition, (c) that the rights of SDG&E specified in the foregoing clause (b) not be subject to being modified, stayed, avoided or otherwise limited by any further order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code, and (d) the assumption by Assignor of the Assigned Agreement (a "Bankruptcy Order"). It being further understood that if such Bankruptcy Order is not timely obtained, Buyer shall have the right to declare an Early Termination Date in accordance with Article 5 of the Assigned Agreement.

(ii) Except to the extent that automatic cancellation, suspension or termination occurs pursuant to the Assigned Agreement, no cancellation, suspension or termination of the Assigned Agreement by SDG&E, shall be binding upon the Assignee without such notice and the opportunity to cure during the applicable extended cure periods specified in this Section 4(b). If the Assignee fails to cure or rectify the effect of a default within the extended cure periods specified in this Section 4(b), SDG&E shall have all its rights and remedies with respect to such default, action or omission as set forth in the Assigned Agreement.

(c) Payments to Designated Account. The Assignor and SDG&E acknowledge and agree that all payments to be made by SDG&E to the Assignor (if any) under the Assigned Agreement shall be made in lawful money of the United States of America in immediately available funds, to the following account:

[name and details for account designated by the Assignee]

or to such other person or entity and/or at such other address as the Assignee may from time to time specify in writing to SDG&E. In making such payments, SDG&E shall be entitled to rely conclusively on instructions that it may receive from time to time from the Assignee without any duty to make inquiry into

the authority of the Assignee to give such instructions or the authenticity of any signatures placed upon such instructions.

Section 5. Damages Limitation.

NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY UNDER THIS CONSENT FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, REMOTE, OR SPECULATIVE DAMAGES OR LOST PROFITS.

Section 6. Miscellaneous.

(a) This Consent shall be binding upon the successors and permitted assigns of each party and shall inure, together with the rights and remedies of the Assignee hereunder, to the benefit of the successors and permitted assigns of the parties hereto, including the Financing Parties and their respective permitted successors, transferees and assigns.

(b) No amendment or waiver of any provisions of this Consent or consent to any departure by any party hereto from any provisions of this Consent shall in any event be effective unless the same shall be in writing and signed by the Assignee and SDG&E.

(c) This Consent shall be governed by, and construed under, the laws of the State of California applicable to contracts made and to be performed in such State and without reference to conflicts of laws. The parties hereto agree that any legal action or proceeding arising out of this Consent may be brought in the courts of the State of California, in and for the County of San Diego, or of the United States of America for the Southern District of California. By execution and delivery of this Consent, the parties hereto accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified airmail, postage prepaid, to the Assignee, SDG&E and the Assignor, as the case may be, at their respective addresses for notices as specified herein and that such service shall be effective five (5) business days after such mailing. Nothing herein shall affect the right to serve process in any other manner permitted by law or the right of the Assignee or SDG&E to bring legal action or proceedings in any other competent jurisdiction. The parties hereto hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of this Consent or the transactions contemplated hereby brought before the foregoing courts on the basis of forum non conveniens.

(d) **EACH OF SDG&E, THE ASSIGNEE AND THE ASSIGNOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT.**

(e) This Consent may be executed in one or more counterparts with the same effect as if such signatures were upon the same instrument. This Consent may be delivered by facsimile transmission.

(f) All notices to be given under this Consent shall be in writing and shall be delivered personally, sent by certified mail return receipt requested or registered first-class mail, postage prepaid, or sent by facsimile, or courier to the intended recipient at its address as set forth on the signature pages below, and all payments to be made under this Consent shall be made by wire transfer of immediately available funds or check representing immediately collectible funds to the account or address of the intended recipient

as set forth on the signature pages hereto, unless the recipient has given notice of another address or account for receipt of notices or payments.

(g) This Consent shall terminate in its entirety upon the earlier of (i) the indefeasible payment in full in cash of all obligations of the Assignor under the Credit Agreement, and (ii) the termination of the Credit Agreement in accordance with the terms thereof and the terms of this Consent. The Assignee agrees to give prompt written notice to the Assignor and SDG&E of the occurrence of either such event.

(h) The captions or headings at the beginning of each Section of this Consent are for convenience only and are not a part of this Consent.

IN WITNESS WHEREOF, each of SDG&E, the Assignee and the Assignor has duly executed this Consent and Agreement as of the date first above written.

SAN DIEGO GAS & ELECTRIC COMPANY

By:

Name:

Title:

[Address for Notices:]

[ASSIGNOR]

By: _____

Name:

Title:

[Address for Notices:]

[ASSIGNEE]

By: _____

Name:

Title:

[Address for Notices:]

APPENDIX XII

NOTICES

Name: _____ (“Seller”)

Name: San Diego Gas and Electric Company, a California corporation (“Buyer” or “SDG&E”)

All Notices:

All Notices:

Delivery Address:

Delivery Address:

Street:

City:

Mail Address:

Mail Address:

Attn:

Phone:

Invoices and Payments:

Invoices and Payments:

Attn:

Phone:

Wire Transfer:

Wire Transfer:

BNK:

BNK:

ACCT Title:

ACC Title:

ABA:

SDG&E ABA:

ACCT:

ACCT:

DUNS:

DUNS:

Federal Tax ID Number:

Federal Tax ID Number:

Credit and Collections:

Credit and Collections:

Attn:

Attn:

Phone:

Phone:

Fax:

With additional Notices of an Event of Default to Contract Manager:

With additional Notices of an Event of Default to Contract Manager:

Attn:

Attn:

Phone:

Phone:

APPENDIX XIII

SAFETY PROVISIONS

[To be defined in SDG&E solicitation documents, including Safety Requirements and Contractor Safety Program Standards]